Transportation & Economic Development Appropriations Committee

Tuesday, April 4, 2006
4:00 p.m. – 5:30 p.m. or Upon Adjournment of Fiscal Council
Reed Hall (102)

Allan G. Bense
Speaker

Don Davis
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Transportation & Economic Development Appropriations Committee

Start Date and Time:	Tuesday, April 04, 2006 04:00 pm Or Upon Adjournment of the Fiscal Council
End Date and Time:	Tuesday, April 04, 2006 05:30 pm
Location:	Reed Hall (102 HOB)
Duration:	1.50 hrs

Consideration of the following bill(s):

HB 423 CS Professional Regulation by the Department of Business and Professional Regulation by Gibson, H.
HB 661 CS Governmental Services Telephone Systems by Arza
HB 773 Petition Process by Goodlette
HB 905 Transportation Concurrency Management by Goodlette
HB 1037 CS Campaign Financing by Rivera
HB 1107 Road Designations by Jennings
HB 1173 CS Driver History Records by Ross
HB 1211 CS Notification Regarding the State Minimum Wage by Fields
HB 1395 CS Traffic Safety by Sorensen
HB 1537 CS Legal Actions by Llorente
HB 7077 Transportation by Transportation Committee
HB 7081 Administrative Procedures by Governmental Operations Committee
HB 7089 Facilities for Retained Spring Training Franchises by Tourism Committee

NOTICE FINALIZED on 03/31/2006 16:19 by SLB

Florida House of Representatives

Fiscal Council
Committee on Transportation & Economic Development Appropriations

Allan G. Bense
Speaker

Don Davis
Chair

AGENDA
Transportation & Economic Development Appropriations
Tuesday, April 4, 2006
4:00 p.m. – 5:30 p.m. or Upon Adjournment of the Fiscal Council
Reed Hall (102 EL)

I. Meeting Call to Order

II. Opening remarks by Chairman Davis

III. Consideration of the following bill(s):

HB 423 CS Professional Regulation by the Department of Business and Professional Regulation by Gibson, H.
HB 661 CS Governmental Services Telephone Systems by Arza
HB 773 Petition Process by Goodlette
HB 905 Transportation Concurrency Management by Goodlette
HB 1037 CS Campaign Financing by Rivera
HB 1107 Road Designations by Jennings
HB 1173 CS Driver History Records by Ross
HB 1211 CS Notification Regarding the State Minimum Wage by Fields
HB 1395 CS Traffic Safety by Sorensen
HB 1537 CS Legal Actions by Llorente
HB 7077 Transportation by Transportation Committee
HB 7081 Administrative Procedures by Governmental Operations Committee
HB 7089 Facilities for Retained Spring Training Franchises by Tourism Committee

IV. Closing Remarks & Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 423 CS Professional Regulation by the Department of Business and Professional Regulation
SPONSOR(S): Gibson
TIED BILLS: **IDEN./SIM. BILLS:** SB 552

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	16 Y, 0 N, w/CS	Livingston	Liepshutz
2) Local Government Council	7 Y, 0 N	Smith	Hamby
3) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
4) Commerce Council			
5)			

SUMMARY ANALYSIS

Auctioneers are licensed and regulated pursuant to part VI of chapter 468, F.S., by the Florida Board of Auctioneers under the Department of Business and Professional Regulation (DBPR). Auctioneers are required to meet certain statutory qualifications and pass a written examination. Current law provides for disciplinary actions, including disciplinary actions for failure to account for money that has come into an auctioneer's control through an auction. Building code administrators, inspectors and plans examiners are regulated by part XII of chapter 468, F.S. This regulation is under the Florida Building Code Administrators and Inspectors Board and administered by the DBPR. Construction contracting is regulated under part I of chapter 489, F.S. With certain statutory exemptions from licensure, construction contractors are regulated by the Construction Industry Licensing Board (CILB) under the DBPR.

The bill addresses auctioneers to require fingerprints to be submitted and processed for licensure.

The bill addresses building code administrators, inspectors and plans examiners to: provide for additional options to qualify to take the licensing examination to be a building code inspector or plans examiner; allow a licensee within a statutorily defined small county to provide services to another jurisdiction; exempt building code licensees from the building code bill of rights when they are subject to disciplinary action for offenses that occur outside of the scope of their employment; authorize discipline when the licensee fails to enforce the Florida Building Code or permitting requirements, even if the violation occurs outside their official jurisdiction or duties; require education study in ethics and professional standards; and prohibit an enforcement official from accepting labor, services, or materials for free or at a noncompetitive rate from any person who performs work that may be under the enforcement authority of the enforcement official.

The bill addresses construction contractors to: authorize the CILB to conduct a criminal records background check on applicants for licensure to determine moral character and to deny licensure for felons who have not had their civil rights restored; provide that the CILB rules pertaining to financial stability may include minimum requirements for net worth, cash, and bonding; provide that a state certified or registered contractor, or a locally licensed contractor, may not perform work for which he or she is not properly licensed, subcontract work to an unlicensed person when the work requires a license, or fail to obtain required local permits; and provide that local jurisdictions may issue civil citations against state certified contractors and such citations are not considered discipline.

The bill is not anticipated to have a significant fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government/promote personal responsibility - The bill authorizes the CICB, by rule, to adopt guidelines for the determination of financial stability, which may include minimum requirements for net worth, cash, and bonding.

The bill provides for the submittal and processing of fingerprints for background checks of applicants for licensure as an auctioneer, and requires the applicant to bear the cost of processing fingerprints and conducting the background check. The bill provides for the application of the building code enforcement officials' bill of rights to certain disciplinary investigations and proceedings. The bill provides for disciplinary proceedings for violations involving failure to follow building code, licensing, or permit requirements, obstructing an investigation, and accepting services at a noncompetitive rate from any person whose work may be under the enforcement authority of the official, under certain circumstances. The bill requires applicants for initial issuance of a certificate or registration as a contractor to submit to criminal history records checks, and requires certain applicants for a certificate or registration to provide documentation regarding the status of civil rights.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Auctioneers

Auctioneers are licensed and regulated pursuant to part VI of chapter 468, F.S., by the Florida Board of Auctioneers under the DBPR. Auctioneers are required to pass a written exam prepared and administered by the DBPR. Current law provides for disciplinary actions, including disciplinary action for failure to account for money that has come into an auctioneer's control through an auction. The Auctioneer Recovery Fund was established to allow persons to recover losses when they otherwise could not collect a court judgment against an auctioneer.

Building code administrators, inspectors, and plans examiners

Building code administrators, inspectors and plans examiners are regulated by part XII of chapter 468, F.S. This regulation is under the Florida Building Code Administrators and Inspectors Board and administered by the DBPR. The board consists of nine members, five of whom are licensees under the board. Applicants for licensure must pass an examination and meet certain experience requirements. Once licensed, individuals must comply with all regulatory provisions.

A building code administrator supervises building code activities, including plans review, enforcement, and inspection. A building code inspector inspects construction that requires permits to determine compliance with building codes and state accessibility laws. A plans examiner reviews plans submitted for building permits to determine compliance with construction codes.

There are several categories of inspector and plans examiner certificates, relating to the scope of the activities the licensee may perform (e.g., building inspector, commercial or residential electrical inspector, mechanical inspector, building plans examiner, plumbing plans examiner, etc.). Part XII of chapter 468, F.S., sets forth the requirements for licensure for the various types and categories of certificate holders, including credentials from specified private organizations or specified experience (or a combination of education and experience) and an examination.

Section 468.607, F.S., provides that no person may be employed by a state agency or local government to perform the duties of building code administrator, plans examiner, or inspector after October 1, 1993, without possessing a proper valid certificate issued in accordance with the provisions of part XII of chapter 468, F.S.

Section 468.619, F.S., establishes the enforcement officials' bill of rights. This section provides controls relating to reasonable times, places, and procedures for DBPR when questioning building enforcement officials against whom a complaint has been filed; and establishes time frames for keeping DBPR from having "open ended" investigations and prosecutions. Specific provisions include requiring DBPR to:

1) Inform the licensee of any complaint within 10 days;
2) Reach a preliminary conclusion about "where the case is going" after 60 days, and notify the enforcement official of the preliminary conclusion;
3) Complete its investigation and be prepared to send it to probable cause within six months of the receipt of the complaint; and
4) Allow the enforcement official to obtain a copy of the investigative report prior to the case being sent to probable cause, and letting him or her submit explanatory or mitigating material to the panel for their consideration.

DBPR is required to investigate all legally sufficient complaints it receives pursuant to the provisions of section 455.225, F.S., which is a part of the "general powers" of the DBPR. The determination of legal sufficiency is made upon initial receipt of a complaint received from the public or other source. A complaint is legally sufficient when the allegation, if true, amounts to a licensure violation.

DBPR complaint, investigatory, and prosecutorial processes are as follows: first the complaint is received; it then must be forwarded to the proper office (complaints against regulated professionals are received by the Bureau of Consumer Services in Tallahassee), processed, and referred to a complaint analyst for review. Next legal sufficiency is determined, if possible, from the description of the alleged violation. Sometimes, additional information, such as copies of documents, may be required. In some cases this can be done quickly, but in others it can take a much longer period of time and require the cooperation of sources outside the control of DBPR.

If legal sufficiency is determined, the case is sent to the investigative office in the area where the alleged violation occurred. This can take several days to get the complaint to the proper office and assigned to an investigator. The investigator must rely on the cooperation of others to conduct the investigation, and sometimes subpoenas must be issued to get information. As an investigation progresses, new leads and sources of information are revealed and must be pursued. Sometimes, especially in a technical area such as building code matters, experts must be retained to perform expert analysis.

Once an investigation of a legally sufficient complaint is completed, it is forwarded to the Office of General Counsel for review and presentation to the probable cause panel of the board. The panel, which consists of at least two board members, determines whether there is probable cause to support prosecution of the matter. The complaint, the investigation, and the panel's deliberations are confidential until ten days after probable cause is found by the panel. If probable cause is not found, the case remains confidential and may be closed or sent back for further investigation. However, this exemption does not apply to actions against unlicensed persons.

When probable cause is found, DBPR files an administrative complaint and pursues prosecution of the matter. Each prosecuted case eventually ends up before the board. The board is the agency head for purposes of taking final agency action in each case.

Appeals may be taken to the District Courts of Appeal pursuant to section 120.68, F.S. The rights of licensees are protected during the disciplinary process by chapter 120, F.S., and the uniform rules

adopted by the Administration Commission pursuant thereto, section 455.225, F.S., and the Florida and United States Constitutions.

Construction – Contractors scope of work

Construction contracting is regulated under part I of chapter 489, F.S. With certain statutory exemptions from licensure, construction contractors are regulated by the CILB within the DBPR. Contractors must either be certified (i.e., licensed by the state to contract statewide), or registered (i.e., licensed by a local jurisdiction and registered by the state to contract work within the geographic confines of the local jurisdiction only).

The CILB is statutorily divided into two divisions. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors. Division II has jurisdiction over the remaining contractors under the CILB, including plumbing contractors, air conditioning contractors and mechanical contractors. Construction contractors include general, building, and residential contractors, and several categories of subcontractors, including roofing, plumbing, mechanical, sheet metal, air-conditioning, pool and spa, solar, pollutant storage systems, and underground utility contractors.

The "scope of work" for which licensure is required is specified in statute by definition. Each definition of the various professions is known as the "practice act" for that profession and establishes the guidelines for the individual practitioners.

To provide recourse for consumers who suffer monetary damages because of improper actions by contractors, section 489.140, F.S., creates the "Florida Homeowners' Construction Recovery Fund" (FHCRF) as a separate account within the Professional Regulation Trust Fund. The FHCRF is funded through a one-half cent per square foot surcharge on building permits collected and distributed pursuant to section 468.631, F.S., relating to the Building Code Administrators and Inspectors Fund.

Section 468.631, F.S., provides for the assessment of the surcharge by the appropriate local government, which may retain up to 10% of the money to fund projects intended to improve building code enforcement. Additional amounts are to be used to fund the regulation of building code administrators and inspectors by the Florida Building Code Administrators and Inspectors Board. After adequately funding this regulation, excess monies are transferred to the FHCRF. Any money remaining after the FHCRF is sufficiently funded is applied to the costs of the regulation of contractors by the CILB.

Section 489.141, F.S., provides that a person may recover from the FHCRF based on a civil judgment against a contractor arising from a contract or based on a board order of restitution for a violation of part I of chapter 489, F.S., relating to building code violations, financial mismanagement, abandonment of a project, or certain false representations.

Section 489.143, F.S., provides the mechanism for and limitations on payment from the fund. The cap for individual claim is $50,000 and the aggregate amount that may be paid as a result of the actions of any one contractor is $500,000.

Continuing education

Section 468.627(5), F.S., provides that a building official must provide proof that at least 14 classroom hours of continuing education courses have been completed during each biennium since the issuance or renewal of the license.

Effect of Proposed Changes

Fingerprints

The bill amends section 468.385(4), F.S., to require fingerprints for a criminal history record check, to be submitted and processed for licensure of an auctioneer.

Definitions

The bill adds to section 468.603, F.S., relating to building code administrators, inspectors and plans examiners, and to section 489.105, F.S, relating to contracting, the following definitions:

- "Willful" means the mental state in which a person commits an act knowing that, or showing reckless disregard for whether, the act is prohibited under this part or does not commit an act while knowing that, or showing reckless disregard for whether, the act is required under this part. A person knows that an act is prohibited or required if the person is aware of the provision of this part that prohibits or requires the act, understands the meaning of that provision, and performs the act that is prohibited or fails to perform the act that is required. "Willful" does not include specific intent to defraud.

- "Knowing" or "knowingly" means the mental state in which a person, with respect to information, has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the information. "Knowing" or "knowingly" does not include specific intent to defraud.

- "Reckless disregard" means the mental state in which a person commits an act despite the act's being prohibited or required under this part and wholly disregards the law without making any reasonable effort to determine whether the act would constitute a violation of this part. "Reckless disregard" does not include specific intent to defraud.

Education options

The bill amends section 468.609(2) and (5)(a), F.S., to provide for a fifth and sixth option to qualify to take the licensing examination to be a building code inspector or plans examiner. One program is 400 hours of technical education and 2 years, with at least 1 year of experience in construction, building code inspection, or plans review experience. The education must include at least 20 hours of study in ethics and professional standards. The other option is an associate degree program or higher from an accredited institution in construction management with a major in building code administration.

Small county reciprocity

The bill amends section 468.617(4), F.S., to allow building officials, building code inspectors or plans examiners who hold a limited certificate and are employed by a jurisdiction within a statutorily defined small county (75,000 populations) to provide building code inspection, plans review, or building code administration services to another jurisdiction within a statutorily defined small county.

Protections under the bill of rights

The bill amends section 468.619(10), F.S., to exempt building code enforcement officials licensed under chapter 468, F.S., who are under investigation or the subject of disciplinary proceedings for actions that occur outside the scope of their employment as an enforcement official, from the rights and privileges as specified in the building code enforcement officials' bill of rights. As a result, the time limitations for investigations would not be applicable.

Disciplinary proceedings

The bill amends section 468.621(1), F.S., to authorize the Florida Building Code Administrators and Inspectors Board to discipline building code enforcement officials when the licensee fails to enforce the Florida Building Code or permitting requirements, even if the violation occurs outside their official

jurisdiction or duties. The bill provides it is a violation if a building official obstructs an investigation or provides forged documents or false evidence or testimony in an investigation.

The bill prohibits an enforcement official from accepting labor, services, or materials for free or at a noncompetitive rate from any person who performs work that may be under the enforcement authority of the enforcement official. It creates an exemption for immediate family members.

Ethics study

The bill amends sections 468.627(5) and (6), F.S., to require a minimum of 2 of the required 14 classroom hours be on ethics relating to professional standards of practice, duties, and responsibilities.

Construction contractors – financial responsibility

The bill amends section 489.115, F.S., to authorize the CILB to conduct a criminal records background check on applicants for licensure to determine moral character and to deny licensure for felons who have not had their civil rights restored.

The bill also provides that the CILB rules pertaining to financial stability may include requirements for net worth, cash, and bonding. The bill provides that fifty percent of the financial requirements may be met by completing a 14-hour financial responsibility course approved by the board.

Unlicensed activity/local civil citations against state certified contractors

The bill amends section 489.127, F.S., to provide that a state certified or registered contractor, or a locally licensed contractor, may not perform work for which he or she is not properly licensed, subcontract work to an unlicensed person when the work requires a license, or fail to obtain required local permits.

The bill also provides that local jurisdictions may issue civil citations against state certified contractors and the citations are not considered discipline.

C. SECTION DIRECTORY:

Section 1. Amends subsection (4) of section 468.385, F.S., relating to licenses required, qualifications, examination.

Section 2. Adds subsections (9), (10), and (11), to section 468.603, F.S., relating to definitions.

Section 3. Amends subsection (2) and paragraph (a) of subsection (5) of section 468.609, F.S, relating to administration, standards for certification and additional categories of certification.

Section 4. Adds subsection (4) to section 468.617, F.S., relating to joint building code inspection department and other arrangements.

Section 5. Adds subsection (10) to section 468.619, F.S., to restrict application of the building code enforcement officials' bill of rights.

Section 6. Amends subsection (1) of section 468.621, F.S., relating to disciplinary proceedings.

Section 7. Amends subsections (5) and (6) of section 468.627, F.S., relating to application, examination, renewal and fees.

Section 8. Adds subsections (20), (21), and (22) to section 489.105, F.S., relating to definitions.

Section 9. Adds subsection (6) and amends subsection (7) to section 489.115, F.S., relating to certification and registration, endorsement, reciprocity, renewals and continuing education.

Section 10. Adds paragraph (d) to subsection (4) of section 489.127, F.S., and amends paragraph (o) of subsection (5) of section 489.127, F.S., relating to prohibitions and penalties.

Section 11. Provides that the bill takes effect on July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Not anticipated to be significant.

2. Expenditures:

   Not anticipated to be significant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not anticipated to be significant.

D. FISCAL COMMENTS:

According to DBPR, the fiscal estimate states, "There is no significant fiscal impact on state government."

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill allows the rule authority of the CILB relating to financial stability to "include minimum requirements for net worth, cash, and bonding" for construction contractors.

According to DBPR, "The bill may necessitate amendments to the Florida Building Code Administrators and Inspectors Board's disciplinary guideline rules."

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

According to DBPR, the bill "amends section 489.127(4)(d), F.S., to prohibit certified and registered contractors from subcontracting to unlicensed persons work that requires a license. This may conflict with section 489.117(4)(e), F.S., which authorizes individuals who perform work that does not specifically require a state contractor's license to perform work under the supervision of a licensed residential, building or general contractor on a single-family residence without having to obtain a local license.

The bill also amends s. 489.127(5)(o), F.S., to provide that local jurisdictions may issue civil citations against certified contractors, and such citations are not considered discipline. The amendment conflicts with s. 489.113, F.S., which limits local jurisdictions to taking action against certified contractors' permit privileges."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Business Regulation Committee adopted one strike-all amendment on March 16, 2006. The amendment provides the following:

- Requires fingerprints to be submitted and processed for licensure of an auctioneer;
- Provides statutory definitions for willful, knowing, and reckless disregard;
- Provides for a fifth and sixth option to qualify to take the licensing examination to be a building code inspector or plans examiner and includes training in ethics and professional standards and requires ethics training as a part of the currently required continuing education courses;
- Allows for reciprocity by contract between small counties for staffing shortages of inspectors and examiners; and
- Authorizes the CILB to conduct a criminal records background check on applicants for licensure to determine moral character.

The bill, as amended, was reported favorably with committee substitute.

CHAMBER ACTION

The Business Regulation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to professional regulation by the Department of Business and Professional Regulation; amending s. 468.385, F.S.; providing for the submittal and processing of fingerprints for background checks of applicants for licensure as an auctioneer; requiring the applicant to bear the cost of processing fingerprints and conducting the background check; amending s. 468.603, F.S.; providing definitions; amending s. 468.609, F.S.; providing eligibility requirements for a person to take the examination for certification as a building code inspector or plans examiner; revising a reference to the organization administering certain examinations; amending s. 468.617, F.S.; authorizing certain limited certificateholders to provide services to specified jurisdictions; amending s. 468.619, F.S.; providing for the application of the building code enforcement officials' bill of rights to certain disciplinary investigations and proceedings; amending s. 468.621, F.S.;

providing for disciplinary proceedings for violations involving failure to follow building code, licensing, or permit requirements, obstructing an investigation, and accepting services at a noncompetitive rate from any person whose work may be under the enforcement authority of the official, under certain circumstances; amending s. 468.627, F.S.; providing requirements for continuing education in ethics; removing provisions relating to an option of taking an equivalency test in lieu of taking core curriculum classes; amending s. 489.105, F.S.; providing definitions; amending s. 489.115, F.S.; requiring applicants for initial issuance of a certificate or registration as a contractor to submit to criminal history records checks; requiring certain applicants for a certificate or registration to provide documentation regarding the status of civil rights; authorizing the board to deny licensure to certain applicants; specifying that guidelines for determining financial stability may include minimum requirements for net worth, cash, and bonding; authorizing a portion of financial requirements to be met by completing specified coursework; amending s. 489.127, F.S.; providing penalties when a licensed contractor performs unlicensed activity, hires a subcontractor to perform unlicensed activity, or fails to obtain required permits; revising a provision that prohibits local jurisdictions from exercising disciplinary authority against certificateholders; providing an effective date.

WHEREAS, the state licenses and regulates the construction industry for the benefit of its citizens in order to protect their health, safety, and welfare, and

WHEREAS, it is critical to the health, safety, and welfare of the public that the laws enacted by the Legislature relating to construction permitting enforcement of the Florida Building Code and licensing of the industry be implemented and enforced, and

WHEREAS, it is critical that the public be able to place their trust in the public officials who are charged with enforcement of those laws and codes, and

WHEREAS, in order for enforcement officials, licensing investigators, local and state regulatory boards, and their supporting legal staff to perform licensing and disciplinary functions, they must have the enabling legislation and authority to do so, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 468.385, Florida Statutes, is amended to read:

468.385 Licenses required; qualifications; examination.--

(4)(a) Any person seeking a license as an auctioneer must pass a written examination approved by the board which tests his or her general knowledge of the laws of this state relating to provisions of the Uniform Commercial Code that are relevant to auctions, the laws of agency, and the provisions of this act.

(b) Any person seeking a license as an auctioneer shall file a complete set of fingerprints for a criminal history record check. Fingerprints shall be taken in a manner approved by the board and shall be submitted electronically to the Department of Law Enforcement for state processing. The Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. The results of the criminal history record check shall be returned to the board for purposes of screening. The cost of processing fingerprints and conducting a criminal history record check shall be borne by the applicant for licensure.

Section 2. Subsections (9), (10), and (11) are added to section 468.603, Florida Statutes, to read:

468.603 Definitions.--As used in this part:

(9) "Willful" means the mental state in which a person commits an act knowing that, or showing reckless disregard for whether, the act is prohibited under this part or does not commit an act while knowing that, or showing reckless disregard for whether, the act is required under this part. A person knows that an act is prohibited or required if the person is aware of the provision of this part that prohibits or requires the act, understands the meaning of that provision, and performs the act that is prohibited or fails to perform the act that is required. "Willful" does not include specific intent to defraud.

(10) "Knowing" or "knowingly" means the mental state in which a person, with respect to information, has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless

disregard of the information. "Knowing" or "knowingly" does not include specific intent to defraud.

(11) "Reckless disregard" means the mental state in which a person commits an act despite the act's being prohibited or required under this part and wholly disregards the law without making any reasonable effort to determine whether the act would constitute a violation of this part. "Reckless disregard" does not include specific intent to defraud.

Section 3. Subsection (2) and paragraph (a) of subsection (5) of section 468.609, Florida Statutes, are amended to read:

468.609 Administration of this part; standards for certification; additional categories of certification.--

(2) A person may take the examination for certification as a building code inspector or plans examiner pursuant to this part if the person:

(a) Is at least 18 years of age.

(b) Is of good moral character.

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 5 years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought;

2. Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

3. Demonstrates a combination of technical education in

the field of construction or a related field and experience which totals 4 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review; ~~or~~

4. Currently holds a standard certificate as issued by the board and satisfactorily completes a building code inspector or plans examiner training program of not less than 200 hours in the certification category sought. The board shall establish by rule criteria for the development and implementation of the training programs;~~.~~

5. Demonstrates a combination of technical education in the field of building code inspection or plans review and experience which totals 2 years, with at least 1 year of such total being experience in construction, building code inspection, or plans review. The technical education portion of this requirement shall require proof of satisfactory completion of a technical education program of not fewer than 400 hours in the chosen category of building code inspection or plans review in the certification category sought with not fewer than 20 hours of the technical education program covering ethics and professional standards. The board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the technical education programs; or

6. Has completed, at a minimum, an associate degree program in Construction Management from an accredited institution with a major in Building Code Administration.

~~(d) After the Building Code Training Program is established under s. 553.841, demonstrates successful completion of the core curriculum approved by the Florida Building Commission, appropriate to the licensing category sought.~~

(5)(a) To obtain a standard certificate, an individual must pass an examination approved by the board which demonstrates that the applicant has fundamental knowledge of the state laws and codes relating to the construction of buildings for which the applicant has building code administration, plans examination, or building code inspection responsibilities. It is the intent of the Legislature that the examination approved for certification pursuant to this part be substantially equivalent to the examinations administered by the International Code Council ~~Southern Building Code Congress International and the Council of American Building Officials~~.

Section 4. Subsection (4) is added to section 468.617, Florida Statutes, to read:

468.617 Joint building code inspection department; other arrangements.--

(4) Nothing in this part shall prohibit any building code inspector, plans examiner, or building code administrator holding a limited certificate who is employed by a jurisdiction within a statutorily defined small county to provide building code inspection, plans review, or building code administration services to another jurisdiction within a statutorily defined small county.

Section 5. Subsection (10) is added to section 468.619, Florida Statutes, to read:

468.619 Building code enforcement officials' bill of rights.--

(10) This bill of rights applies to disciplinary investigations and proceedings against licenses issued under this part and disciplinary investigations and proceedings relating to the official duties of an enforcement official. This bill of rights does not apply to disciplinary investigations and proceedings against other licenses that the enforcement official holds or disciplinary investigations and proceedings unrelated to the enforcement official's official duties.

Section 6. Subsection (1) of section 468.621, Florida Statutes, is amended to read:

468.621 Disciplinary proceedings.--

(1) The following acts constitute grounds for which the disciplinary actions in subsection (2) may be taken:

(a) Violating or failing to comply with any provision of this part, or a valid rule or lawful order of the board or department pursuant thereto.

(b) Obtaining certification through fraud, deceit, or perjury.

(c) Knowingly assisting any person practicing contrary to the provisions of:

1. This part; or

2. The building code adopted by the enforcement authority of that person.

(d) Having been convicted of a felony against this state or the United States, or of a felony in another state that would have been a felony had it been committed in this state.

(e) Having been convicted of a crime in any jurisdiction which directly relates to the practice of building code administration or inspection.

(f) Making or filing a report or record that ~~which~~ the certificateholder knew ~~knows~~ to be false, or knowingly inducing another to file a false report or record, or knowingly failing to file a report or record required by state or local law, or knowingly impeding or obstructing such filing, or knowingly inducing another person to impede or obstruct such filing.

(g) Failing to properly enforce applicable building codes, licensing, or permit requirements that the certificateholder knew were applicable, or ~~by~~ committing willful misconduct, gross negligence, gross misconduct, repeated negligence, or negligence resulting in a significant danger to life or property, regardless of whether the violation occurs within the employment jurisdiction of the enforcement official or occurs in connection with the employment of the enforcement official or outside the scope of the employment of the enforcement official.

(h) Issuing a building permit to a contractor, or any person representing himself or herself as a contractor, without obtaining the contractor's certificate or registration number, where ~~such~~ a certificate or registration is required.

(i) Failing to lawfully execute the duties and responsibilities specified in this part and ss. 553.73, 553.781, 553.79, and 553.791.

(j) Performing building code inspection services under s. 553.791 without satisfying the insurance requirements of that section.

(k) Obstructing an investigation or providing or inducing another to provide forged documents, false forensic evidence, or false testimony to a local or state board or member thereof or to a licensing investigator.

(l) Accepting labor, services, or materials for free or at a noncompetitive rate from any person who performs work that may be under the enforcement authority of the enforcement official who is not an immediate family member of the enforcement official. "Immediate family member" includes a spouse, child, parent, sibling, grandparent, aunt, uncle, or first cousin of the person or the person's spouse, or any person who resides in the home of the enforcement official.

Section 7. Subsections (5) and (6) of section 468.627, Florida Statutes, are amended to read:

468.627 Application; examination; renewal; fees.--

(5) The certificateholder shall provide proof, in a form established by board rule, that the certificateholder has completed at least 14 classroom hours of at least 50 minutes each of continuing education courses during each biennium since the issuance or renewal of the certificate, including the specialized or advanced coursework approved by the Florida Building Commission, as part of the Building Code Training Program established pursuant to s. 553.841, appropriate to the licensing category sought. A minimum of 2 of the required 14 classroom hours shall be on ethics relating to professional standards of practice, duties, and responsibilities of the certificateholder. The board shall by rule establish criteria for approval of continuing education courses and providers, and

may by rule establish criteria for accepting alternative nonclassroom continuing education on an hour-for-hour basis.

(6) Each certificateholder shall provide to the board proof of completion of the core curriculum courses~~, or passing the equivalency test~~ of the Building Code Training Program established by s. 553.841~~,~~ within 2 years after commencement of the program. Continuing education hours spent taking such core curriculum courses shall count toward the number required for license renewal. ~~A licensee who passes the equivalency test in lieu of taking the core curriculum courses shall receive full credit for core curriculum course hours.~~

Section 8. Subsections (20), (21), and (22) are added to section 489.105, Florida Statutes, to read:

489.105 Definitions.--As used in this part:

(20) "Willful" means the mental state in which a person commits an act knowing that, or showing reckless disregard for whether, the act is prohibited under this part or does not commit an act while knowing that, or showing reckless disregard for whether, the act is required under this part. A person knows that an act is prohibited or required if the person is aware of the provision of this part that prohibits or requires the act, understands the meaning of that provision, and performs the act that is prohibited or fails to perform the act that is required. "Willful" does not include specific intent to defraud.

(21) "Knowing" or "knowingly" means the mental state in which a person, with respect to information, has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless

disregard of the information. "Knowing" or "knowingly" does not include specific intent to defraud.

(22) "Reckless disregard" means the mental state in which a person commits an act despite the act's being prohibited or required under this part and wholly disregards the law without making any reasonable effort to determine whether the act would constitute a violation of this part. "Reckless disregard" does not include specific intent to defraud.

Section 9. Subsection (6) of section 489.115, Florida Statutes, is amended and renumbered as subsection (7), present subsection (7) is renumbered as subsection (8), and a new subsection (6) is added to that section, to read:

489.115 Certification and registration; endorsement; reciprocity; renewals; continuing education.--

(6) An applicant for initial issuance of a certificate or registration shall submit to a criminal history records check to determine moral character. If the applicant has been convicted of a felony, he or she shall provide documentation regarding the status of his or her civil rights. The board may deny licensure to an applicant who does not present proof of restoration of civil rights after conviction of a felony.

(7) ~~(6)~~ An initial applicant shall, along with the application, and a certificateholder or registrant shall, upon requesting a change of status, submit to the board a credit report from a nationally recognized credit agency that reflects the financial responsibility of the applicant or certificateholder or registrant. The credit report required for the initial applicant shall be considered the minimum evidence

necessary to satisfy the board that he or she is financially responsible to be certified, has the necessary credit and business reputation to engage in contracting in the state, and has the minimum financial stability necessary to avoid the problem of financial mismanagement or misconduct. The board shall, by rule, adopt guidelines for determination of financial stability, which may include minimum requirements for net worth, cash, and bonding for Division I certificateholders of no more than $20,000 and for Division II certificateholders of no more than $10,000. Fifty percent of the financial requirements may be met by completing a 14-hour financial responsibility course approved by the board.

Section 10. Present paragraph (d) of subsection (4) of section 489.127, Florida Statutes, is redesignated as paragraph (e), a new paragraph (d) is added to that subsection, and paragraph (o) of subsection (5) of that section is amended, to read:

489.127 Prohibitions; penalties.--

(4)

(d) A certified or registered contractor or a contractor authorized by a local construction licensing board may not perform work for which he or she is not properly licensed, subcontract to unlicensed persons to perform work that requires a license, or fail to obtain required permits.

(5) Each county or municipality may, at its option, designate one or more of its code enforcement officers, as defined in chapter 162, to enforce, as set out in this subsection, the provisions of subsection (1) and s. 489.132(1)

against persons who engage in activity for which a county or municipal certificate of competency or license or state certification or registration is required.

(o) ~~Nothing in~~ This subsection does not ~~shall be construed to~~ authorize local jurisdictions to exercise disciplinary authority, other than to issue civil citations, which are not considered discipline, ~~or procedures established in this subsection~~ against an individual holding a proper valid certificate issued under ~~pursuant to~~ this part.

Section 11. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0423**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative(s) Llorente offered the following:

Amendment (with title amendment)

Remove line(s) 343-354 and insert:

Section 10. Paragraph (o) of subsection (5) of section 489.127, Florida Statutes, is amended, to read:

489.127 Prohibitions; penalties.--

========== T I T L E A M E N D M E N T ==========

Remove line(s) 45-48 and insert:

489.127, F.S.; revising a provision that

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 661 CS Governmental Services Telephone Systems
SPONSOR(S): Arza
TIED BILLS: **IDEN./SIM. BILLS:** SB 1062

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	12 Y, 0 N, w/CS	Cater	Holt
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

The bill establishes within the Department of Community Affairs (DCA) a matching grant program to provide funds to local governments for the implementation and coordination of "311 nonemergency and other governmental services telephone systems." It provides legislative intent that a coordinated 311 system may reduce the volume of nonemergency 911 calls and provide seamless access to various governmental entities. It authorizes DCA to accept and administer appropriated funds to provide grants. With the grant program, a municipality or county that wishes to receive grant funds must provide $1 for every $1 in grant money it wishes to receive. The bill provides a system for awarding the grants, but limits the award amount that a municipality or county may receive. The bill provides that a report be submitted by each 311 system receiving funding by December 15, 2007.

The bill assigns the DCA the tasks of reviewing each grant application, arranging them in order of priority, and approving or disapproving funding. The bill provides minimum criteria for DCA to consider when evaluating the grant requests. The bill gives DCA rulemaking authority to administer the provisions of this bill.

For the 2006-2007 fiscal year, the bill appropriates $10 million to DCA from General Revenue to fund the grant program.

This act shall take effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill creates a matching grant program where municipalities and counties can obtains funds from DCA to implement a coordinated 311 telephone system.

Maintain Public Security-The bill provides legislative findings that a 311 telephone system for nonemergency and other governmental services may reduce the volume of nonemergency calls to 911 public safety answering points.

B. EFFECT OF PROPOSED CHANGES:

Background

The History of 311 Systems

In 1997 the Federal Communications Commission designated "311" as a national, voluntary, non-toll, three-digit telephone number for non-emergencies.[1] This designation was prompted by concerns relating to the misuse of 911 emergency systems. Evaluations of 911 usage during the mid-1990's indicated that 50 to 90 percent of all calls to 911 were not actual emergencies.[2] These nonemergency calls resulted in backlogs and inefficiencies for public safety agencies, as well as frustration for callers with emergency needs.

According to the U.S. Department of Justice, 311 systems vary in the types of non-emergency calls handled, as designated by individual jurisdictions. Similar to 911 systems, 311 call centers generally operate 24 hours a day, take requests for service only inside their jurisdictions, and often dispatch assistance. Employees are also trained to deal with 911 emergencies in case of inappropriate/misdirected calls. Examples of non-emergency calls include incidents that are non-life threatening and do not require an immediate response.

Florida's 311 Experience

Miami-Dade County activated its 311 system on November 29, 2004, where it is a central number for reaching a wide variety of government services. Emergency management officials in Miami-Dade County made extensive use of the recently activated 311 system during the 2005 hurricane season. During the emergency activations for Hurricanes Rita, Katrina and Wilma, 311 handled more than 250,000 calls immediately before, during and after the storms. County officials reported that during these activations, the 311 system was able to take many calls that would have previously gone to 911, enabling the 911 system to remain available for truly life-threatening situations. County officials identified the following benefits associated with the 311 system:

- Provides a fast, simple and convenient single access point for residents to obtain information and request services from their local government;

- Makes delivery of services more efficient and effective by consolidating agency-based answer centers and streamlining processes;

[1] FCC Order No. FCC 97-51, released February 19, 1997.
[2] U.S. Department of Justice, Office of Community Oriented Policing, "*311 for Non-Emergencies – Helping Communities One Call at a Time*", August 25, 2003.

- Increases governments' ability to respond to unanticipated events, such as severe storm events and hurricanes, by steering non-emergency calls away from 911, preserving the availability of the emergency system for callers truly in need of an immediate response;

- Improves individual department service delivery and accountability through real-time, countywide service performance tracking and reporting;

- Provides 'closed loop' communications with citizens by integrating front-end service requests with the back-end resolution processes; and

- Provides seamless multi-jurisdictional services for citizens regardless to where they live.

Currently, Miami-Dade and Orange are the only Florida counties that have operational 311 systems. However, a number of local governments have expressed interest in implementing a 311 system.

Proposed Changes

The bill creates s. 365.180, F.S., relating to the coordinated 311 nonemergency and other governmental services telephone systems grant program.

The bill provides legislative intent that a 311 telephone system for nonemergency and other governmental services may reduce the volume of nonemergency 911 calls, particularly in times of a disaster.

The bill defines "coordinated 311 nonemergency and governmental services telephone system" as a 311 system that is multi-jurisdictional in nature such that it is designed to provide seamless access to nonemergency and other governmental service.

The bill authorizes the DCA to accept and administer funds that are appropriated to it to provide grants to counties and municipalities for the operation of a coordinated 311 nonemergency and other governmental services telephone system.

A county or municipality may apply for a state grant to support the implementation and operation of a coordinated 311 nonemergency and other governmental services telephone system. A grant awarded under this section must be matched by a contribution from the county or municipality in an amount equal to $1 for each $1 in grant money awarded.

The DCA is required to review each grant application submitted, and annually submit two lists to the Secretary of DCA. The first list must contain all applications received, and the second list must make recommendations for grant awards arranged in order of priority. The Secretary of DCA must approve the grant before it can be issued. The DCA may allocate grants only for coordinated 311 nonemergency and other governmental services telephone systems that are approved by the Secretary or for which funds are appropriated by the Legislature.

The annual amount of any one grant may not exceed 50 percent of the total annual cost of operating the coordinated 311 system, but an annual grant to a coordinated 311 system is capped at $2.5 million. The total amount of grants awarded to a coordinated 311 system in a 5-year period may not exceed $10 million.

No later than December 15, 2007, each 311 system that receives funding under this section shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing expenditure of the funds appropriated to it for purposes of this section.

The DCA may adopt rules prescribing the criteria to be applied to applications for grants and rules providing for the administration of this section. The bill requires the minimum criteria in evaluating a municipality or county's request for a grant to include the following:

- Population;
- Prior establishment of a 311 number;
- Interoperability between proposed 311 system and existing 911 system;
- Commitment of funds beyond the minimum match contribution; and
- Long-range plan for sustainability.

For fiscal year 2006-2007, the bill appropriates $10 million from the general revenue fund to DCA to fund the coordinated 311 nonemergency and other governmental services telephone system grant program.

This act shall take effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Creates s. 365.180, F.S., related to the coordinated 311 nonemergency and other governmental services telephone system grant program.

Section 2. Provides for an appropriation.

Section 3. This act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   For the 2006-2007 fiscal year, the bill provides for a $10 million appropriation from General Revenue to DCA to fund the coordinated 311 nonemergency and other governmental services telephone system grant plan.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Municipalities and counties are eligible to receive grants from DCA in order to implement a coordinated 311 system.

2. Expenditures:

   In order to receive a grant through this program, a municipality or county is to provide a matched contribution of $1 for every $1 in grant money awarded. These monies would be used to implement a coordinated 311 system. When the five year allocation maximum is reached, some municipalities and counties may have difficulty sustaining the system, if other funds are not secured.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to DCA, it will require two additional positions to administer the grant program. Its five year fiscal estimates are as follows:

2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	Five-Year Total
$109,500	$100,768	$102,054	$103,360	$104,685	$520,367

This estimate is based on the following assumptions:

- A 1.5 percent annual salary increase;
- Two grants of $1,000,000 awarded annually; and
- Heavy start-up costs in the 2006-2007 fiscal year.

While the bill contains a $10 million appropriation for the 2006-2007 fiscal year, any unused portion of the appropriation may revert back to General Revenue, and DCA may need to request funds for subsequent fiscal years.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill allows DCA to adopt rules prescribing the criteria to be applied to applications for grants and for the administration of this section. The bill provides minimum criteria to be considered in evaluating the application.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 21, 2006, the Utilities & Telecommunications Committee adopted one amendment. This amendment provides minimum criteria for DCA to consider when evaluating grants to municipalities and counties for implementing a 311 system.

CHAMBER ACTION

The Utilities & Telecommunications Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to governmental services telephone systems; creating s. 365.180, F.S.; providing legislative findings; defining the term "coordinated 311 nonemergency and other governmental services telephone system"; authorizing the Department of Community Affairs to accept and administer funds to provide grants for certain governmental services telephone systems; authorizing counties and municipalities to apply for grants; requiring a county or municipality to provide matching funds; providing procedures for approval of grant awards; requiring approval by the Secretary of Community Affairs or appropriation by the Legislature; providing for certain limitations on grant funds amounts; requiring a report to the Governor and the Legislature detailing expenditures; authorizing the department to adopt rules; providing application evaluation criteria; providing an appropriation; providing an effective date.

WHEREAS, in 1997, the Federal Communications Commission authorized the use of 311 as a telephone number for "nonemergency police and other governmental services," and

WHEREAS, in 2001, the Legislature authorized a 311 pilot project in chapter 2001-133, Laws of Florida, to improve the overall efficiency of 911 telephone systems and reduce 911 emergency response times, and

WHEREAS, several counties and municipalities in Florida have thus far implemented 311 telephone systems that provide a single access point to nonemergency and other governmental services, and

WHEREAS, 311 alleviates congestion on 911 circuits and helps make 911 emergency systems more efficient by diverting nonemergency calls that could impede emergency responses, and

WHEREAS, 311 has proven to be critical during hurricanes and other emergency situations and disasters by diverting many calls from 911 emergency systems and keeping 911 open and available for truly life-threatening situations, and

WHEREAS, 311 provides important information not only to citizens, but to government by providing data about the source of and the reasons for calls, and

WHEREAS, 311's greatest value is its ability to coordinate the efforts of municipalities, counties, and other state and local jurisdictions to provide an integrated, seamless single source for nonemergency and other governmental services, and

WHEREAS, 311 systems could provide mutual aid to neighboring areas by serving as backup call centers under

circumstances where disaster may disable local city or county communication networks, and

WHEREAS, 911 was established to provide "rapid direct access to public safety agencies," and the Florida 211 Network was established to provide "coordination for information and referral for health and human services," and

WHEREAS, 311 serves as an effective component of unified governmental services which complements but does not duplicate the services provided by 911 and 211, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 365.180, Florida Statutes, is created to read:

365.180 Coordinated 311 nonemergency and other governmental services telephone system grant program; grants for operation; funding; approval; allocation.--

(1) The Legislature finds that a 311 telephone system for nonemergency and other governmental services may reduce the volume of nonemergency calls to 911 public safety answering points, particularly in times of a disaster. The Legislature further finds that 311 systems improve public access to government by providing seamless access to various governmental entities, enhancing coordination among state and various local jurisdictions, and improving service delivery.

(2) As used in this section, the term "coordinated 311 nonemergency and other governmental services telephone system" means a 311 system that is multijurisdictional in nature such

that it is designed to provide seamless access to nonemergency and other governmental services.

(3) The Department of Community Affairs may accept and administer funds that are appropriated to it for providing grants to counties and municipalities for the operation of a coordinated 311 nonemergency and other governmental services telephone system.

(4) A county or municipality may apply for a grant of state funds to support the implementation and operation of a coordinated 311 nonemergency and other governmental services telephone system.

(5) A state grant awarded under this section must be matched by a contribution from the county or municipality in an amount equal to $1 for each $1 awarded under this section.

(6) The Department of Community Affairs shall review each application submitted under subsection (4) for a grant to implement a coordinated 311 nonemergency and other governmental services telephone system and, annually, shall submit a list of all applications received and a list of the systems that are recommended for the award of grants, arranged in order of priority, to the secretary of the Department of Community Affairs for the secretary's approval. The Department of Community Affairs may allocate grants only for coordinated 311 nonemergency and other governmental services telephone systems that are approved by the secretary or for which funds are appropriated by the Legislature.

(7) The annual amount of any one grant made under this section may not exceed the lesser of $2.5 million or 50 percent

of the total annual cost of operating the coordinated 311 nonemergency and other governmental services telephone system. The total amount of the grants awarded to a coordinated 311 nonemergency and other governmental services telephone system in a 5-year period may not exceed $10 million.

(8) No later than December 15, 2007, each 311 system that receives funding under this section shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing expenditure of the funds appropriated to it for the purposes of this section.

(9) The Department of Community Affairs may adopt rules pursuant to ss. 120.536(1) and 120.54 prescribing the criteria to be applied to applications for grants and rules providing for the administration of this section. The application evaluation criteria shall, at a minimum, include the following:

(a) The population of the applicant county or municipality.

(b) Prior establishment of a 311 number by the applicant county or municipality.

(c) The interoperability between the proposed 311 system and the existing 911 public safety answering points within the applicant county or municipality.

(d) The commitment of funds by the applicant county or municipality beyond the minimum match contribution.

(e) The long-range plan for sustainability of the proposed 311 system submitted by the applicant county or municipality.

Section 2. For fiscal year 2006-2007, the sum of $10 million is appropriated from the General Revenue Fund to the

Department of Community Affairs to fund the coordinated 311 nonemergency and other governmental services telephone system grant program.

Section 3. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **661 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative Arza offered the following:

Amendment

Remove lines 113 through 117 and insert:

(8) Each 311 system receiving state matching funds shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 15, 2007, detailing how the funds appropriated for the 311 system were spent.

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **661 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative Arza offered the following:

Amendment (with title amendment)

Remove lines 134 through 138 and insert:

Section 2. Grants for the coordinated 311 nonemergency and other governmental services telephone system grant program within the Department of Community Affairs may be awarded to the extent funds are appropriated in law or made available from private sources.

========== T I T L E A M E N D M E N T ==========

Remove lines 22 and 23 and insert:

application evaluation criteria; providing grants may be awarded as appropriated or as made available from private sources; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 773 Petition Process
SPONSOR(S): Goodlette
TIED BILLS: **IDEN./SIM. BILLS:** SB 1244

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections Committee	5 Y, 4 N	Mitchell	Mitchell
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) State Administration Council			
4)			
5)			

SUMMARY ANALYSIS

HB 773 creates the "Petition Fraud and Voter Protection Act" and establishes a number of safeguards for the initiative petition process. The bill attempts to more closely regulate the petition verification process, to require that additional information be provided to a voter who signs an initiative petition, and to regulate circulators, in particular *paid* circulators, by requiring greater disclosure.

The bill also authorizes additional criminal sanctions against people who abuse the petition process, either through fraud or misrepresentation, or through the misuse of signed petitions or voter registrations.

A similar version of this bill passed the House by a vote of 96-22 in 2005 (HB 1471), but died on the Senate calendar on May 6, 2005.

HB 773 contains new grants of rulemaking authority to the Division of Elections (See Section III).

Except as otherwise expressly provided, the bill is effective August 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Personal Responsibility

The bill implicates the principle of promoting personal responsibility in that it requires persons who collect signatures for citizen initiatives to be held more accountable for the accuracy of the signatures and to provide additional information to voters when they sign initiative petitions.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Art. XI, Fla. Const., governs amendments to the State Constitution. A proposed amendment is presented to the voters pursuant to one of the following methods[1]:

- Joint resolution passed by 3/5 vote of each house of the Legislature;
- Initiative petition;
- Proposal by the Constitution Revision Commission;
- Proposal by the Taxation and Budget Reform Commission; or
- Proposal by a constitutional convention.

Prior to the 1968 revision of the State Constitution, amendments could be proposed only by constitutional convention or through resolutions adopted by the Legislature. Florida adopted the citizen initiative process in 1968.[2] The first initiative appeared on Florida's ballot in 1976 and was adopted by the voters.[3] From 1976-2002, there have been 104 proposed constitutional amendments on the ballot, 21 of which were proposed by initiative.[4] Sixteen of the 21 initiative amendments were approved by Florida's electors.[5]

During the past ten years, there has been a marked increase in the number of citizen initiatives. In 1996, 37 initiatives were circulated, three of which made the ballot; in 1998, 27 initiatives were circulated, none of which made the ballot; in 2000, 16 initiatives were circulated, one of which made the ballot; and in 2002, 23 initiatives were circulated, four of which made the ballot.[6]

The procedure for placing an initiative on the ballot is provided in s. 100.371, F.S. To obtain ballot position:

- the sponsor of an amendment must register as a political committee pursuant to s. 106.03, F.S., and submit the text of the amendment with the form on which the signatures will be obtained; the form must be approved by the Secretary of State before signatures are obtained;

---

[1] Art. XI, s. 1 , Fla. Const. (legislature); Art. XI, s. 2, Fla. Const. (Revision Commission); Art. XI, s. 3, Fla. Const. (citizen initiative); Art. XI, s. 4, Fla. Const. (constitutional convention); Art. XI, s. 6, Fla. Const. (Taxation and Budget Reform Commission).
[2] Art. XI, s. 3, Fla. Const.
[3] Amendment #1; Art. II, s. 8, Fla. Const. (The so-called "Sunshine Amendment." Votes For - 1,765,626; Votes Against – 461,940).
[4] Statistics provided by the Division of Elections.
[5] Id.
[6] Id. While there were no citizen initiatives on the ballot in 1998, there were four amendments proposed by legislative resolution and nine amendments proposed by the Constitutional Revision Convention.

- the Secretary of State must determine the total number of valid signatures and the distribution from congressional districts[7]; signatures are valid for four years from the date when made;
- the certification of ballot position must be completed by February 1 of the year the general election is held[8]; and
- the Supreme Court must approve the validity of the proposal.

In 2004, 488,722 signatures were required for ballot certification; in 2006, 611,009 signatures were required for ballot certification.

As of January 31, 2006, there are 50 active citizen initiatives according to the Division of Elections web site[9]. Pursuant to a constitutional amendment adopted in 2004, initiative petitions must be filed and certified with the custodian of state records (Department of State) by February 1 of the year in which the general election is held.[10] There are two citizen initiatives that made ballot position by the required February 1 deadline for the 2006 general election.

The first proposed amendment requires the legislature to annually use some of the state's tobacco settlement funds for a statewide tobacco education and prevention program targeted at youth.[11] The second proposed amendment would create a fifteen member commission to replace the legislature to apportion single-member legislative and congressional districts.[12]

Criminal Penalties

Certain criminal sanctions exist with regard to the voter registration and petition process. Paying a person to register to vote, paying someone to solicit voter registrations based upon the number of registrations obtained, and altering a voter registration application are all third degree felonies.[13] Signing a petition for a particular issue more than once, or signing another person's name, or a fictitious name, to a petition, is a first degree misdemeanor.[14] Supervisors of elections are currently authorized to investigate fraudulent registrations and illegal voting, and may report their findings to the state attorney or the Florida Elections Commission.[15]

During the 2004 election cycle, numerous stories appeared in newspapers throughout the state of Florida concerning alleged petition fraud. Two petition gatherers were arrested in Santa Rosa County for over 40 counts each of uttering a forged document.[16] Several other supervisors of elections found petitions signed with the names of dead voters.[17]

The Florida Department of Law Enforcement issued a press release in October of 2004 indicating that it had received numerous complaints relating to voting irregularities regarding voter fraud, and had initiated several investigations. While the FDLE did not reveal details of the investigations, it did say the investigations focused on the following conduct:

---

[7] Art. XI, s. 3, Fla. Const., requires that signatures be obtained in at least ½ of the state's congressional districts, and of the state as a whole, equal to eight percent of the voters casting ballots in the last Presidential election.

[8] The new February 1 deadline was approved in the 2004 general election and is contained in s. 5(b), Art. XI, Fla. Const. Section 100.371, F.S., which implements this constitutional provision was amended in 2005 to include the February 1 deadline (s. 28, ch. 2005-278, Laws of Fla.), but the change is not effective until January 1, 2007.

[9] http://election.dos.state.fl.us/initiatives/initiativelist.asp

[10] S.J.R. 2394 amended s. 5, Art. XI, Fla. Const., and was approved by the voters on November 2, 2004.

[11] Floridians for Youth Tobacco Education, Inc. The smoking education initiative began July 20, 2005, and collected 650,403 certified petition signatures. Information taken from the Division of Elections web site.

[12] Committee for Fair Elections. The apportionment commission initiative began March 23, 2005, and collected 689,325 certified petition signatures. Information taken from the Division of Elections web site.

[13] s. 104.012, F.S.

[14] s. 104.185, F.S.

[15] s. 104.42, F.S.

[16] *See*, "Two Pace residents accused in voter scam," Derek Pivnick, *Pensacola News Journal*, page 1A, July 2, 2004.

[17] *See*, "Names of dead persons found on petitions," Joni James and Lucy Morgan, *St. Petersburg Times*, September 28, 2004.

In some cases, persons who believed they were signing petitions later found out that their signatures or possible forged signatures were used to complete a fraudulent voter registration. In other instances, it appears that workers hired to obtain legitimate voter registrations filled in the information on the registration forms that should have been completed by the registrants. On several occasions, workers appear to have signed multiple voter registrations themselves using information obtained during the registration drive. In many of the situations complained about, the workers were being paid on the basis of each registration form submitted.[18]

Effect of Proposed Changes

See **Section Directory** below.

C. SECTION DIRECTORY:

Section 1. Provides a title, "Petition Fraud and Voter Protection Act."

Section 2. Amends s. 99.097, F.S., regarding the verification of signatures on petitions.

- Clarifies that the supervisors of elections are verifying signatures and not checking names.
- Requires that petitions be verified one at a time and not by random sample. (This codifies current practice and only applies to initiative petitions and not candidate qualifying petitions.)
- Prohibits counting petitions toward ballot placement unless all provisions are met.
- Prohibits a petition sponsor from providing compensation to any paid petition circulator if the sponsor has filed an oath of undue burden, unless the sponsor first pays all supervisors for each signature checked, or reimburses the General Revenue fund for such costs. If a sponsor that has filed for undue burden pays circulators before paying for verification, all signatures collected prior to that date are invalid.
- Creates the ability to file a court challenge by a political committee or elector, alleging improper verification, and requires proof by a preponderance of the evidence. Improperly verified signatures will not be counted. Such a challenge must be filed no later than 90 days after an issue obtains ballot position.
- Removes from the ballot or invalidates vote if sponsor uses petition fraud to get on the ballot.

Section 3. Amends s. 100.371, F.S., regarding initiatives and procedures for placement on the ballot.

- Implements the new February 1 deadline for filing initiative petitions with the Secretary of State that is contained in Art. XI, sec 5., Fla. Const.
- Clarifies that it must be the voter, not the amendment sponsor, who inserts a date on an initiative petition.

[18] "FDLE Investigates Statewide Voter Fraud," press release, Florida Department of Law Enforcement, October 21, 2004.

- Provides that a petition form contain only the information required by statute or Division of Elections rules.

- Clarifies that a petition is a political advertisement and must comply with all requirements of ch. 106, F.S. (including requirements for political disclaimers).

- The requirements for a valid petition include:

    - An original signature, date, name, address, and voter registration number or date of birth;
    - the petition signer must be a registered voter;
    - the petition must be received by the appropriate supervisor within 30 days of signature;
    - the petition signer must note if she was presented the petition by a petition circulator; and
    - compliance by all petition circulators with the regulations in s. 100.372.

- Allows a voter to submit a signed petition form to the petition sponsor by mail or otherwise to an address listed on the form.

- Requires the inclusion on the form in 16 point font or larger, notices regarding a voter's ability to take a petition form with them and return it to the following address and the fact that the proposed amendment has not been officially reviewed by any court or state agency.

- Creates a process for revocation of one's signature on an initiative petition. A petition revocation form must be adopted by rule by the Division of Elections. A revocation form must be filed by an elector no later than February 1 immediately preceding the general election (or by Feb. 1 of the next successive general election, if the initiative has not received ballot position).

- Requires the supervisors of elections to retain all petition and revocation forms for one year after the election in which the issue appeared on the ballot.

- Requires that the ballot contain a statement (prescribed by rule of the Department of State) that a financial impact statement is constitutionally required and is not an endorsement by the state.

- Changes a deadline to April 1 of the year in which a general election is held for the Florida Supreme Court to complete its review of financial impact statements submitted by the Financial Impact Estimating Conference.

Section 4. Repeals section 28 of ch. 2005-278, Laws of Fla. which was scheduled to take affect January 1, 2007. Section 28 contemplated use of the statewide voter registration system for signature verification, but the system was not scheduled to become operational until January 2006, just prior to the February 1 petition verification deadline. Thus, the section was given a later effective date of January 1, 2007. In Section 5 below, the bill reenacts many of the changes proposed in section 28 of ch. 2005-278, with additional changes outlined below.

Section 5. Further amends s. 100.371, F.S., as amended in section 3 of the bill, effective January 1, 2007. This section incorporates the changes made in section 3 of the bill and adds the following:

- Petitions are deemed to be filed with the Secretary of State when the secretary determines that a sufficient number of valid and verified petitions have been signed by the number of electors required by the constitution, subject to one's right to revoke a petition signature.

- Moves the requirements for petition signatures from s. 100.371(2) to s. 100.371(7). Subsection 100.371(2) is deleted.

- Requires supervisors of elections to record the date a petition is received and the date the signature is verified in the statewide voter registration system.

- Re-enacts the provision that petition signatures are valid for 4 years from the date made.

- Provides that the Secretary of State shall determine the total number of verified signatures using the number recorded in the statewide voter registration system. This system became operational in January 2006 and is not being used for the current election cycle to verify petition signatures.

Section 6. Creates s. 100.372, F.S., regarding regulation of initiative petition circulators.

- Regulates petition circulators by defining "petition circulator", and "paid petition circulator"; requires petition circulators to be at least 18 years old and eligible to register to vote in this or any other state in the U.S.; and provides that circulators cannot be convicted felons who are ineligible to vote.

- Requires paid circulators to wear a badge identifying themselves as paid circulators.

- Provides protections for property owners, who may:

  - Prohibit activity which supports or opposes initiatives;
  - permit or prohibit activity which supports or opposes initiatives; or
  - permit activity which supports or opposes initiatives, subject to uniform time, place, or manner restrictions.

- Requires a valid petition form to include:

  - The name of the organization;
  - the website of the organization;
  - an indication of whether the circulator is paid or unpaid; and
  - the amount of compensation, if the circulator is a paid employee.

- Paid circulators must attach to their petitions a signed and dated declaration under penalty of perjury. Such declaration must include: 1) the circulator's name, address, date of birth, voter registration number or similar government-issued identification number, and 2) be signed and dated by circulator.

- The declaration must state that the paid circulator:

  - has read and understands the law;
  - is at least 18 years old;
  - is eligible to register to vote;
  - collected the enclosed forms;
  - believes the signature is the actual voter's signature;
  - believes that a signer was a registered voter; and
  - has not been paid by the signature.

- Petitions without a declaration are invalid.

- Paid petition circulators must provide the initiative sponsor a copy of a government-issued photo ID that reflects the circulator's proper residence. The sponsor must maintain these cards for inspection, and if not on file with the sponsor, petitions are invalid.

Section 7. Amends s. 101.161, F.S., regarding referenda and ballots.

- Technical change to correct a reference to s. 100.371(10), F.S.

Section 8. Technical, conforming change.

- This section repeals section 33 of chapter 2005-278, Laws of Fla. The bill sponsor intends to amend this statutory section affected by this repeal and make it effective January 1, 2007, as the chapter law did. The change is necessary to accommodate the new statewide voter registration system which went on-line January 1, 2006.

Section 9. Technical, conforming change.

- The changes which must be effective January 1, 2007, to accommodate the new statewide voter registration system, as described above are contained in this section, effective January 1, 2007.

Section 10. Amends s. 104.012, F.S., regarding consideration for registration and interference with registration.

- Makes the failure to submit a voter registration to the appropriate supervisor of elections within 10 days a third degree felony. (This tracks existing criminal sanctions in the election code).

Section 11. Amends s. 104.185, F.S., regarding violations involving petitions.

- For all of the following infractions, a first offense is a first-degree misdemeanor, and subsequent offenses are third-degree felonies:

  - Signing someone else's name to a petition.
  - Swearing a false oath or affirmation in connection with a petition.
  - Submitting false information on a petition or petition revocation form.
  - Providing something of value for signing a petition.
  - Bribing or threatening a person in order to obtain a signature.
  - Paying for signatures by the number of signatures.
  - Altering a signed petition without the signor's knowledge or consent.
  - Fraud or attempting to defraud while gathering signatures.

- Creates a civil penalty not to exceed $1,000-per-violation for any paid petition circulator who violates any of the above provisions.

Section 12. Amends s. 104.42, F.S., regarding unlawful registrations, petitions and voting.

- Authorizes supervisors of elections to investigate alleged petition fraud.

- Requires supervisors of elections to document and report fraud to the Florida Elections Commission within 10 days.

Section 13. **Applies changes in the bill only to petitions collected and submitted for verification after the effective date of the act (August 1, 2006).**

Section 14. **Provides a severability clause.**

Section 15. **Provides an effective date of August 1, 2006, unless otherwise expressly provided.**

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

HB 773 contains four new grants of rulemaking authority to the Division of Elections that govern the petition gathering process: The Division is required to adopt a rule:

- Providing for a form for revoking one's signature on a petition (petition-revocation form)(s. 100.371(7), F.S.; p. 8.);

- governing the financial impact statement that appears on the ballot and that inclusion of such statement on the ballot is not an endorsement by the state of the proposed amendment or revision. (s. 100.371(10), F.S.; p. 10);

- prescribing certain information for inclusion on petition and petition-revocation forms (new s. 100.372(5), F.S.; p. 24); and

- prescribing certain information for inclusion on the signed and dated declaration submitted by a paid petition circulator (new s. 100.371(6)(a), F.S.; p. 25).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to the petition process; providing a short title; amending s. 99.097, F.S.; revising requirements for verification of signatures on petitions; prescribing limits on use of paid petition circulators; providing procedures to contest alleged improper signature verification; repealing s. 28, ch. 2005-278, Laws of Florida, relating to procedures for placement of initiatives on the ballot; amending s. 100.371, F.S.; revising procedures for placing an initiative on the ballot; providing requirements for information to be contained on petitions; providing procedure for revocation of a petition signature; requiring a statement on the ballot regarding the financial impact statement; creating s. 100.372, F.S.; providing regulation for initiative petition circulators and their activities; repealing s. 33, ch. 2005-278, Laws of Florida, relating to referenda and ballots; amending s. 101.161, F.S.; conforming a cross-reference; amending s. 104.012, F.S.; providing criminal penalties for specified offenses involving voter registration applications; amending s. 104.185, F.S.; proscribing specified actions involving petitions and providing or increasing criminal penalties therefor; amending s. 104.42, F.S.; prescribing duties of supervisors of elections with respect to unlawful registrations, petitions, petition revocations, and voting; providing for verifying and counting signatures submitted for verification before the effective date of

the act; requiring resubmission and reapproval of petition forms; providing severability; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Petition Fraud and Voter Protection Act."

Section 2. Subsections (1), (3), and (4) of section 99.097, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

99.097 Verification of signatures on petitions.--

(1) As determined by each supervisor, based upon local conditions, the verification of signatures ~~checking of names~~ on petitions may be based on the most inexpensive and administratively feasible of either of the following methods of verification:

(a) A name-by-name, signature-by-signature check of the number of valid ~~authorized~~ signatures on the petitions; or

(b) A check of a random sample, as provided by the Department of State, of names and signatures on the petitions. The sample must be such that a determination can be made as to whether or not the required number of valid signatures has ~~have~~ been obtained with a reliability of at least 99.5 percent. Rules and guidelines for this method of petition verification shall be promulgated by the Department of State, which may include a requirement that petitions bear an additional number of names and signatures, not to exceed 15 percent of the names and signatures otherwise required. If the petitions do not meet such

criteria, then the use of the verification method described in this paragraph shall not be available to supervisors.

Notwithstanding any other provision of law, petitions to secure ballot placement for an issue, and petition revocations directed thereto pursuant to s. 100.371, must be verified by the method provided in paragraph (a).

(3)(a) A signature ~~name~~ on a petition, in a name that ~~which name~~ is not in substantially the same form as a name on the voter registration books, shall be counted as a valid signature if, after comparing the signature on the petition with the signature of the alleged signer as shown on the registration books, the supervisor determines that the person signing the petition and the person who registered to vote are one and the same. In any situation in which this code requires the form of the petition to be prescribed by the division, no signature shall be counted toward the number of signatures required unless it is on a petition form prescribed by the division. A signature on a petition may not be counted toward the number of valid signatures required for ballot placement unless all relevant provisions of this code have been satisfied.

(b) If a voter signs a petition and lists an address other than the legal residence where the voter is registered, the supervisor shall treat the signature as if the voter had listed the address where the voter is registered.

(4)(a) The supervisor shall be paid in advance the sum of 10 cents for each signature checked or the actual cost of checking such signature, whichever is less, by the candidate or,

in the case of a petition to have an issue placed on the ballot, by the person or organization submitting the petition. However, if a candidate, person, or organization seeking to have an issue placed upon the ballot cannot pay such charges without imposing an undue burden on personal resources or upon the resources otherwise available to such candidate, person, or organization, such candidate, person, or organization shall, upon written certification of such inability given under oath to the supervisor, be entitled to have the signatures verified at no charge. In the event a candidate, person, or organization submitting a petition to have an issue placed upon the ballot is entitled to have the signatures verified at no charge, the supervisor of elections of each county in which the signatures are verified at no charge shall submit the total number of such signatures checked in the county to the Chief Financial Officer no later than December 1 of the general election year, and the Chief Financial Officer shall cause such supervisor of elections to be reimbursed from the General Revenue Fund in an amount equal to 10 cents for each signature ~~name~~ checked or the actual cost of checking such signatures, whichever is less. In no event shall such reimbursement of costs be deemed or applied as extra compensation for the supervisor. Petitions shall be retained by the supervisors for a period of 1 year following the election for which the petitions were circulated.

(b) A person or organization submitting a petition to secure ballot placement for an issue which has filed a certification of undue burden may not provide compensation to any paid petition circulator, as defined in s. 100.372, unless

the person or organization first pays all supervisors for each signature checked or reimburses the General Revenue Fund for such costs. If a person or organization subject to this paragraph provides compensation to a paid petition circulator before the date the person or organization pays all supervisors for each signature checked or reimburses the General Revenue Fund for such costs, a signature on a petition circulated by the petition circulator before that date may not be counted toward the number of valid signatures required for ballot placement.

(6)(a) The alleged improper verification of a signature on a petition to secure ballot placement for an issue pursuant to this code may be contested in the circuit court by a political committee or by an elector. The contestant shall file a complaint setting forth the basis of the contest, together with the fees prescribed in chapter 28, with the clerk of the circuit court in the county in which the petition is certified or in Leon County if the complaint is directed to petitions certified in more than one county.

(b) If the contestant demonstrates by a preponderance of the evidence that one or more petitions were improperly verified, the signatures appearing on such petitions may not be counted toward the number of valid signatures required for ballot placement. If an action brought under this subsection is resolved after the Secretary of State has issued a certificate of ballot position for the issue, but the contestant demonstrates that the person or organization submitting the petition had obtained verification of an insufficient number of valid and verified signatures to qualify for ballot placement,

the issue shall be removed from the ballot or, if such action is impractical, any votes cast for or against the issue may not be counted and shall be invalidated.

(c) An action under this subsection must be commenced no later than 90 days after the Secretary of State issues a certificate of ballot position for the issue.

Section 3. Section 100.371, Florida Statutes, is amended to read:

100.371 Initiatives; procedure for placement on ballot.--

(1) Constitutional amendments proposed by initiative shall be placed on the ballot for the general election if an initiative petition is filed with the Secretary of State by February 1 of the year in which the general election is to be held ~~occurring in excess of 90 days from the certification of ballot position by the Secretary of State~~.

(2) Certification of ballot position ~~Such certification~~ shall be issued when the Secretary of State has received verification certificates from the supervisors of elections indicating that the requisite number and distribution of valid petitions bearing the signatures of electors have been submitted to and verified by the supervisors. Every signature shall be dated by the elector when made. Signatures are ~~and shall be~~ valid for a period of 4 years following such date, provided all other requirements of law are satisfied ~~complied with~~.

(3) The sponsor of an initiative amendment shall, prior to obtaining any signatures, register as a political committee pursuant to s. 106.03 and submit the text of the proposed amendment to the Secretary of State, with the form on which the

signatures will be affixed, and shall obtain the approval of the Secretary of State of such form. The division ~~Secretary of State~~ shall adopt rules pursuant to s. 120.54 prescribing the style and requirements of such form. Upon filing with the Secretary of State, the text of the proposed amendment and all forms filed in connection with this section must, upon request, be made available in alternative formats. The contents of a petition form are limited to those items required by statute or rule. A petition form is a political advertisement as defined in s. 106.011 and, as such, must comply with all relevant requirements of chapter 106.

(4) The supervisor of elections shall record the date each petition form is received by the supervisor and the date the signature on the form is verified as valid. The supervisor shall verify that the signature on a petition form is valid only if the form complies with all of the following:

(a) The form must contain the original signature of the purported elector;

(b) The purported elector must accurately record on the form the date on which he or she signed the form;

(c) The form must accurately set forth the purported elector's name, street address, county, and voter registration number or date of birth;

(d) The purported elector must be, at the time he or she signs the form, a duly qualified and registered elector authorized to vote in the county in which his or her signature is submitted;

(e) The date the elector signed the form, as recorded by

the elector, must be no more than 30 days before the date the form is received by the supervisor of elections;

(f) The elector must accurately record on the form whether the elector was presented with the form by a petition circulator as defined in s. 100.372;

(g) The elector must accurately record on the form whether the elector signed the form and returned it to a petition circulator as defined in s. 100.372; and

(h) The form must comply with the relevant requirements of s. 100.372.

(5) An elector may submit his or her signed form to the sponsor of the initiative amendment, by mail or otherwise, at an address listed on the form for this purpose.

(6) Each form must contain the following notices at the top of the form in bold type and in a 16-point or larger font, immediately following the title "Constitutional Amendment Petition Form":

RIGHT TO MAIL IN.--You have the right to take this petition home and study the issue before signing. If you choose to sign the petition, you may return it to the sponsors of the amendment at the following address: _____.

NATURE OF AMENDMENT.--The merits of the proposed change to the Florida Constitution appearing below have not been officially reviewed by any court or agency of state government.

(7) An elector's signature on a petition form may be revoked by submitting to the appropriate supervisor of elections a signed petition-revocation form adopted by rule for this purpose by the division. The petition-revocation form is subject

to the same relevant requirements as the corresponding petition form under this code and must be approved by the Secretary of State before any signature is obtained. The petition-revocation form shall be filed with the supervisor of elections no later than the February 1 preceding the next general election or, if the initiative amendment is not certified for ballot position in that election, no later than the February 1 preceding the next successive general election. The supervisor of elections shall promptly verify the signature on the petition-revocation form and process such revocation upon payment, in advance, of a fee of 10 cents or the actual cost of checking such signature, whichever is less.

(8) ~~(4)~~ The sponsor shall submit signed and dated forms to the appropriate supervisor of elections for verification as to the number of registered electors whose valid signatures appear thereon. The supervisor shall promptly verify the signatures upon payment of the fee required by s. 99.097. Upon completion of verification, the supervisor shall execute a certificate indicating the total number of signatures checked, the number of signatures verified as valid and as being of registered electors, the number of signatures validly revoked pursuant to subsection (7), and the distribution of such signatures by congressional district. This certificate shall be immediately transmitted to the Secretary of State. The supervisor shall retain the signed petition ~~signature~~ forms and petition-revocation forms for at least 1 year following the election in which the issue appeared on the ballot or until the Division of Elections notifies the supervisors of elections that the

committee which circulated the petition is no longer seeking to obtain ballot position.

(9) ~~(5)~~ The Secretary of State shall determine from the verification certificates received from supervisors of elections the total number of verified valid signatures and the distribution of such signatures by congressional districts. Upon a determination that the requisite number and distribution of valid signatures have been obtained, the secretary shall issue a certificate of ballot position for that proposed amendment and shall assign a designating number pursuant to s. 101.161. A petition shall be deemed to be filed with the Secretary of State upon the date of the receipt by the secretary of a certificate or certificates from supervisors of elections indicating that valid and verified ~~the~~ petition forms have ~~has~~ been signed by the constitutionally required number and distribution of electors pursuant to this code, subject to the right of revocation established in this section.

(10) ~~(6)~~ (a) Within 45 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary of State ~~or, within 30 days after such receipt if receipt occurs 120 days or less before the election at which the question of ratifying the amendment will be presented~~, the Financial Impact Estimating Conference shall complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative. The ballot must include a statement, as prescribed by rule of the Department of State, to the effect

that the financial impact statement is required under the State Constitution and the Florida Statutes and should not be construed as an endorsement by the state of the proposed revision or amendment to the State Constitution. The Financial Impact Estimating Conference shall submit the financial impact statement to the Attorney General and Secretary of State.

(b)1. The Financial Impact Estimating Conference shall provide an opportunity for any proponents or opponents of the initiative to submit information and may solicit information or analysis from any other entities or agencies, including the Office of Economic and Demographic Research. All meetings of the Financial Impact Estimating Conference shall be open to the public as provided in chapter 286.

2. The Financial Impact Estimating Conference is established to review, analyze, and estimate the financial impact of amendments to or revisions of the State Constitution proposed by initiative. The Financial Impact Estimating Conference shall consist of four principals: one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research, or his or her designee; one person from the professional staff of the Senate; and one person from the professional staff of the House of Representatives. Each principal shall have appropriate fiscal expertise in the subject matter of the initiative. A Financial Impact Estimating Conference may be appointed for each initiative.

3. Principals of the Financial Impact Estimating Conference shall reach a consensus or majority concurrence on a

clear and unambiguous financial impact statement, no more than 75 words in length, and immediately submit the statement to the Attorney General. Nothing in this subsection prohibits the Financial Impact Estimating Conference from setting forth a range of potential impacts in the financial impact statement. Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting. The Financial Impact Estimating Conference shall redraft the financial impact statement within 15 days.

4. If the members of the Financial Impact Estimating Conference are unable to agree on the statement required by this subsection, or if the Supreme Court has rejected the initial submission by the Financial Impact Estimating Conference and no redraft has been approved by the Supreme Court by April 1 of the year in which the general election is to be held ~~5 p.m. on the 75th day before the election~~, the following statement shall appear on the ballot pursuant to s. 101.161(1): "The financial impact of this measure, if any, cannot be reasonably determined at this time."

(c) The financial impact statement must be separately contained and be set forth after the ballot summary as required in s. 101.161(1).

(d)1. Any financial impact statement that the Supreme Court finds not to be in accordance with this subsection shall be remanded solely to the Financial Impact Estimating Conference for redrafting, provided the court's advisory opinion is rendered by April 1 of the year in which the general election is

to be held ~~at least 75 days before the election at which the question of ratifying the amendment will be presented~~. The Financial Impact Estimating Conference shall prepare and adopt a revised financial impact statement no later than 5 p.m. on the 15th day after the date of the court's opinion.

2. If, by 5 p.m. on April 1 of the year in which the general election is to be held ~~the 75th day before the election~~, the Supreme Court has not issued an advisory opinion on the initial financial impact statement prepared by the Financial Impact Estimating Conference for an initiative amendment that otherwise meets the legal requirements for ballot placement, the financial impact statement shall be deemed approved for placement on the ballot.

3. In addition to the financial impact statement required by this subsection, the Financial Impact Estimating Conference shall draft an initiative financial information statement. The initiative financial information statement should describe in greater detail than the financial impact statement any projected increase or decrease in revenues or costs that the state or local governments would likely experience if the ballot measure were approved. If appropriate, the initiative financial information statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context. The initiative financial information statement must include both a summary of not more than 500 words and additional detailed information that includes the assumptions that were made to develop the financial impacts, workpapers, and any other information deemed relevant by the Financial Impact Estimating

Conference.

4. The Department of State shall have printed, and shall furnish to each supervisor of elections, a copy of the summary from the initiative financial information statements. The supervisors shall have the summary from the initiative financial information statements available at each polling place and at the main office of the supervisor of elections upon request.

5. The Secretary of State and the Office of Economic and Demographic Research shall make available on the Internet each initiative financial information statement in its entirety. In addition, each supervisor of elections whose office has a website shall post the summary from each initiative financial information statement on the website. Each supervisor shall include the Internet addresses for the information statements on the Secretary of State's and the Office of Economic and Demographic Research's websites in the publication or mailing required by s. 101.20.

(11) ~~(7)~~ The Department of State may adopt rules in accordance with s. 120.54 to carry out this section ~~the provisions of subsections (1)-(6)~~.

Section 4. Section 28 of chapter 2005-278, Laws of Florida, is repealed.

Section 5. Effective January 1, 2007, section 100.371, Florida Statutes, as amended by this act, is amended to read:

100.371 Initiatives; procedure for placement on ballot.--

(1) Constitutional amendments proposed by initiative shall be placed on the ballot for the general election if an initiative petition is filed with the Secretary of State by

February 1 of the year in which the general election is to be held. A petition shall be deemed to be filed with the Secretary of State upon the date that the secretary determines that valid and verified petitions have been signed by the constitutionally required number and distribution of electors pursuant to this code, subject to the right of revocation established in this section.

~~(2) Certification of ballot position shall be issued when the Secretary of State has received verification certificates from the supervisors of elections indicating that the requisite number and distribution of valid petitions bearing the signatures of electors have been submitted to and verified by the supervisors. Every signature shall be dated by the elector when made. Signatures are valid for a period of 4 years following such date, provided all other requirements of law are satisfied.~~

(2) ~~(3)~~ The sponsor of an initiative amendment shall, prior to obtaining any signatures, register as a political committee pursuant to s. 106.03 and submit the text of the proposed amendment to the Secretary of State, with the form on which the signatures will be affixed, and shall obtain the approval of the Secretary of State of such form. The division shall adopt rules pursuant to s. 120.54 prescribing the style and requirements of such form. Upon filing with the Secretary of State, the text of the proposed amendment and all forms filed in connection with this section must, upon request, be made available in alternative formats. The contents of a petition form are limited to those items required by statute or rule. A petition form is a

political advertisement as defined in s. 106.011 and, as such, must comply with all relevant requirements of chapter 106.

(3) ~~(4)~~ The supervisor of elections shall record the date each petition form is received by the supervisor and the date the signature on the form is verified as valid. The supervisor shall also promptly record these dates in the statewide voter registration system in the manner prescribed by the Secretary of State. The supervisor shall verify that the signature on a petition form is valid only if the form complies with all of the following:

(a) The form must contain the original signature of the purported elector;

(b) The purported elector must accurately record on the form the date on which he or she signed the form;

(c) The form must accurately set forth the purported elector's name, street address, county, and voter registration number or date of birth;

(d) The purported elector must be, at the time he or she signs the form, a duly qualified and registered elector authorized to vote in the county in which his or her signature is submitted;

(e) The date the elector signed the form, as recorded by the elector, must be no more than 30 days before the date the form is received by the supervisor of elections;

(f) The elector must accurately record on the form whether the elector was presented with the form by a petition circulator as defined in s. 100.372;

(g) The elector must accurately record on the form whether

the elector signed the form and returned it to a petition circulator as defined in s. 100.372; and

(h) The form must comply with the relevant requirements of s. 100.372.

(4) ~~(5)~~ An elector may submit his or her signed form to the sponsor of the initiative amendment, by mail or otherwise, at an address listed on the form for this purpose.

(5) ~~(6)~~ Each form must contain the following notices at the top of the form in bold type and in a 16-point or larger font, immediately following the title "Constitutional Amendment Petition Form":

RIGHT TO MAIL IN.--You have the right to take this petition home and study the issue before signing. If you choose to sign the petition, you may return it to the sponsors of the amendment at the following address: _____.

NATURE OF AMENDMENT.--The merits of the proposed change to the Florida Constitution appearing below have not been officially reviewed by any court or agency of state government.

(6) ~~(7)~~ An elector's signature on a petition form may be revoked by submitting to the appropriate supervisor of elections a signed petition-revocation form adopted by rule for this purpose by the division. The petition-revocation form is subject to the same relevant requirements as the corresponding petition form under this code and must be approved by the Secretary of State before any signature is obtained. The petition-revocation form shall be filed with the supervisor of elections no later than the February 1 preceding the next general election or, if the initiative amendment is not certified for ballot position in

that election, no later than the February 1 preceding the next successive general election. The supervisor of elections shall promptly verify the signature on the petition-revocation form and process such revocation upon payment, in advance, of a fee of 10 cents or the actual cost of checking such signature, whichever is less.

(7) ~~(8)~~ Each signature shall be dated by the elector when made and shall be valid for a period of 4 years following such date, if all other requirements of law are met. The sponsor shall submit signed and dated forms to the appropriate supervisor of elections for verification as to the number of registered electors whose valid signatures appear thereon. The supervisor shall promptly verify the signatures upon payment of the fee required by s. 99.097. The supervisor shall promptly record each petition verified as valid in the statewide voter registration system in the manner prescribed by the Secretary of State. ~~Upon completion of verification, the supervisor shall execute a certificate indicating the total number of signatures checked, the number of signatures verified as valid and as being of registered electors, the number of signatures validly revoked pursuant to subsection (7), and the distribution of such signatures by congressional district. This certificate shall be immediately transmitted to the Secretary of State.~~ The supervisor shall retain the signed petition forms and petition-revocation forms for at least 1 year following the election in which the issue appeared on the ballot or until the Division of Elections notifies the supervisors of elections that the committee which circulated the petition is no longer seeking to

obtain ballot position.

(8) ~~(9)~~ The Secretary of State shall determine from the signatures verified by the ~~verification certificates received from~~ supervisors of elections and recorded in the statewide voter registration system the total number of verified valid signatures and the distribution of such signatures by congressional districts. Upon a determination that the requisite number and distribution of valid signatures have been obtained, the secretary shall issue a certificate of ballot position for that proposed amendment and shall assign a designating number pursuant to s. 101.161. ~~A petition shall be deemed to be filed with the Secretary of State upon the date of the receipt by the secretary of a certificate or certificates from supervisors of elections indicating that valid and verified petition forms have been signed by the constitutionally required number and distribution of electors pursuant to this code, subject to the right of revocation established in this section.~~

(9) ~~(10)~~ (a) Within 45 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary of State, the Financial Impact Estimating Conference shall complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative. The ballot must include a statement, as prescribed by rule of the Department of State, to the effect that the financial impact statement is required under the State Constitution and the Florida Statutes and should not be construed as an endorsement

by the state of the proposed revision or amendment to the State Constitution. The Financial Impact Estimating Conference shall submit the financial impact statement to the Attorney General and Secretary of State.

(b)1. The Financial Impact Estimating Conference shall provide an opportunity for any proponents or opponents of the initiative to submit information and may solicit information or analysis from any other entities or agencies, including the Office of Economic and Demographic Research. All meetings of the Financial Impact Estimating Conference shall be open to the public as provided in chapter 286.

2. The Financial Impact Estimating Conference is established to review, analyze, and estimate the financial impact of amendments to or revisions of the State Constitution proposed by initiative. The Financial Impact Estimating Conference shall consist of four principals: one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research, or his or her designee; one person from the professional staff of the Senate; and one person from the professional staff of the House of Representatives. Each principal shall have appropriate fiscal expertise in the subject matter of the initiative. A Financial Impact Estimating Conference may be appointed for each initiative.

3. Principals of the Financial Impact Estimating Conference shall reach a consensus or majority concurrence on a clear and unambiguous financial impact statement, no more than 75 words in length, and immediately submit the statement to the

Attorney General. Nothing in this subsection prohibits the Financial Impact Estimating Conference from setting forth a range of potential impacts in the financial impact statement. Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting. The Financial Impact Estimating Conference shall redraft the financial impact statement within 15 days.

4. If the members of the Financial Impact Estimating Conference are unable to agree on the statement required by this subsection, or if the Supreme Court has rejected the initial submission by the Financial Impact Estimating Conference and no redraft has been approved by the Supreme Court by April 1 of the year in which the general election is to be held, the following statement shall appear on the ballot pursuant to s. 101.161(1): "The financial impact of this measure, if any, cannot be reasonably determined at this time."

(c) The financial impact statement must be separately contained and be set forth after the ballot summary as required in s. 101.161(1).

(d)1. Any financial impact statement that the Supreme Court finds not to be in accordance with this subsection shall be remanded solely to the Financial Impact Estimating Conference for redrafting, provided the court's advisory opinion is rendered by April 1 of the year in which the general election is to be held. The Financial Impact Estimating Conference shall prepare and adopt a revised financial impact statement no later than 5 p.m. on the 15th day after the date of the court's

opinion.

2. If, by 5 p.m. on April 1 of the year in which the general election is to be held, the Supreme Court has not issued an advisory opinion on the initial financial impact statement prepared by the Financial Impact Estimating Conference for an initiative amendment that otherwise meets the legal requirements for ballot placement, the financial impact statement shall be deemed approved for placement on the ballot.

3. In addition to the financial impact statement required by this subsection, the Financial Impact Estimating Conference shall draft an initiative financial information statement. The initiative financial information statement should describe in greater detail than the financial impact statement any projected increase or decrease in revenues or costs that the state or local governments would likely experience if the ballot measure were approved. If appropriate, the initiative financial information statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context. The initiative financial information statement must include both a summary of not more than 500 words and additional detailed information that includes the assumptions that were made to develop the financial impacts, workpapers, and any other information deemed relevant by the Financial Impact Estimating Conference.

4. The Department of State shall have printed, and shall furnish to each supervisor of elections, a copy of the summary from the initiative financial information statements. The supervisors shall have the summary from the initiative financial

information statements available at each polling place and at the main office of the supervisor of elections upon request.

5. The Secretary of State and the Office of Economic and Demographic Research shall make available on the Internet each initiative financial information statement in its entirety. In addition, each supervisor of elections whose office has a website shall post the summary from each initiative financial information statement on the website. Each supervisor shall include the Internet addresses for the information statements on the Secretary of State's and the Office of Economic and Demographic Research's websites in the publication or mailing required by s. 101.20.

(10) ~~(11)~~ The Department of State may adopt rules in accordance with s. 120.54 to carry out this section.

Section 6. Section 100.372, Florida Statutes, is created to read:

100.372 Regulation of initiative petition circulators.--

(1) As used in this section, the term:

(a) "Petition circulator" means any person who, in the context of a direct face-to-face conversation, presents to another person for his or her possible signature a petition form or petition-revocation form regarding ballot placement for an initiative.

(b) "Paid petition circulator" means a petition circulator who receives any compensation as a direct or indirect consequence of the activities described in paragraph (a).

(2) At the time a petition circulator presents to any person for his or her possible signature a petition form or

petition-revocation form regarding ballot placement for an initiative, the petition circulator must:

(a) Be at least 18 years of age;

(b) Be eligible to register to vote in this or any other state or territory of the United States; and

(c) Not be a convicted felon who is ineligible to register or vote under s. 97.041(2)(b).

(3) A paid petition circulator shall, when engaged in the activities described in paragraph (1)(a), wear a prominent badge, in a form and manner prescribed by rule by the division, identifying him or her as a "PAID PETITION CIRCULATOR."

(4) In addition to any other practice or action permissible under law, an owner, lessee, or other person lawfully exercising control over private property may:

(a) Prohibit persons from engaging in activity on the property which supports or opposes initiatives;

(b) Permit or prohibit persons from engaging in activity on the property in support of or opposition to a particular initiative; or

(c) Permit persons to engage in activity on the property which supports or opposes initiatives, subject to restrictions with respect to time, place, and manner which are reasonable and uniformly applied.

(5) Before being presented to a possible elector for signature, a petition form or petition-revocation form regarding ballot placement for an initiative must set forth the following information in a format and manner prescribed by rule by the division:

(a) The name of any organization or entity with which the petition circulator is affiliated and on behalf of which the petition circulator is presenting forms to electors for possible signature;

(b) The name of the sponsor of the initiative if different from the entity with which the petition circulator is affiliated;

(c) A statement directing those seeking information about initiative sponsors and their contributors to the Internet address of the appropriate division website; and

(d) A statement disclosing whether the petition circulator is a paid petition circulator, and, if so, the amount or rate of compensation and the name and address of the person or entity paying the compensation to the paid petition circulator.

(6)(a) A paid petition circulator shall attach to each signed petition form, petition-revocation form, or group of such forms obtained by the paid petition circulator a signed and dated declaration under penalty of perjury executed by the paid petition circulator, in a form prescribed by rule by the division. If the declaration pertains to a group of forms, the forms shall be consecutively numbered on their face by the paid petition circulator and the declaration shall refer to the forms by number.

(b) The declaration must include the paid petition circulator's printed name; the street address at which he or she resides, including county; the petition circulator's date of birth; the petition circulator's Florida voter registration number and county of registration, if applicable, or an

identification number from a valid government-issued photo identification card along with information identifying the issuer; and the date he or she signed the declaration.

(c) The declaration shall attest that the paid petition circulator has read and understands the laws governing the circulation of petition and petition-revocation forms regarding ballot placement for an initiative; that he or she satisfied the requirements of subsection (2) at the time the attached form or forms were circulated to the listed electors; that he or she circulated the attached form or forms; that to the best of the circulator's knowledge and belief each signature thereon is the signature of the person whose name it purports to be; that to the best of the circulator's knowledge and belief each of the persons signing the form or forms was, at the time of signing, a registered elector; that the circulator has not provided or received, and will not in the future provide or receive, compensation that is based, directly or indirectly, upon the number of signatures obtained on petition or petition-revocation forms; and that he or she has not paid and will not in the future pay, and that he or she believes that no other person has paid and will pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix his or her signature to the form.

(d) A signature on a petition form or petition-revocation form regarding ballot placement for an initiative to which a declaration required by this subsection is not attached is invalid, may not be verified by the supervisor of elections, and may not be counted toward the number of valid signatures

required for ballot placement.

(7) Each paid petition circulator shall provide to the sponsor of the initiative amendment for which he or she is circulating petitions a copy of a valid and current government-issued photo identification card that accurately indicates the address at which the paid petition circulator resides. The sponsor of the initiative shall maintain the copies of these identification cards in its files and shall make them available for inspection by the division, a supervisor of elections, or any law enforcement agency. If a sponsor fails to maintain such a copy with respect to a particular paid petition circulator, all petitions obtained by that paid petition circulator before the date the sponsor produces the required copy of the identification card are invalid, may not be verified by the supervisor of elections, and may not be counted toward the number of valid signatures required for ballot placement.

(8) A signature on a petition form or petition-revocation form regarding ballot placement for an initiative which does not fully comply with the applicable provisions of this code, or which was obtained in violation of the applicable provisions of this code, is invalid, may not be verified by a supervisor of elections, and may not be counted toward the number of valid signatures required for ballot placement.

Section 7. Subsection (1) of section 101.161, Florida Statutes, is amended to read:

101.161 Referenda; ballots.--

(1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of

such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. Except for amendments and ballot language proposed by joint resolution, the substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. In addition, for every amendment proposed by initiative, the ballot shall include, following the ballot summary, a separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(10) ~~s. 100.371(6)~~. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

Section 8. Section 33 of chapter 2005-278, Laws of Florida, is repealed.

Section 9. Effective January 1, 2007, subsection (1) of section 101.161, Florida Statutes, as amended by this act, is amended to read:

101.161 Referenda; ballots.--

(1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. Except for amendments and ballot language proposed by joint resolution, the substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. In addition, for every amendment proposed by initiative, the ballot shall include, following the ballot summary, a separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(9) ~~s. 100.371(10)~~. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.

Section 10. Section 104.012, Florida Statutes, is amended to read:

104.012 Consideration for registration; interference with registration; soliciting registrations for compensation;

alteration of registration application; failing to submit registration application.--

(1) Any person who gives anything of value that is redeemable in cash to any person in consideration for his or her becoming a registered voter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This section shall not be interpreted, however, to exclude such services as transportation to the place of registration or baby-sitting in connection with the absence of an elector from home for registering.

(2) A person who by bribery, menace, threat, or other corruption, directly or indirectly, influences, deceives, or deters or attempts to influence, deceive, or deter any person in the free exercise of that person's right to register to vote at any time, upon the first conviction, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and, upon any subsequent conviction, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person may not solicit or pay another person to solicit voter registrations for compensation that is based upon the number of registrations obtained. A person who violates the provisions of this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who alters the voter registration application of any other person, without the other person's knowledge and consent, commits a felony of the third degree, punishable as

provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Any person who obtains an executed voter registration application from another person and who willfully fails to submit this application to the appropriate supervisor of elections within 10 days commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 11. Section 104.185, Florida Statutes, is amended to read:

104.185 Violations involving petitions~~; knowingly signing more than once; signing another person's name or a fictitious name~~.--

(1) A person who knowingly signs a petition or petitions to secure ballot position for a candidate, a minor political party, or an issue more than one time commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and, upon any subsequent conviction, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who signs another person's name or a fictitious name to any petition, or to a petition revocation form, to secure ballot position for a candidate, a minor political party, or an issue commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and, upon any subsequent conviction, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who willfully swears or affirms falsely to any oath or affirmation, willfully procures another person to

swear or affirm falsely to an oath or affirmation, or willfully files a false declaration under s. 120.372(6) or willfully procures another person to do so, in connection with or arising out of the petitioning process, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and, upon any subsequent conviction, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who willfully submits any false information on a petition or petition-revocation form commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and, upon any subsequent conviction, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) A person who directly or indirectly gives or promises anything of value to any other person to induce that other person to sign a petition or petition-revocation form commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and, upon any subsequent conviction, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) A person who, by bribery, menace, threat, or other corruption, directly or indirectly influences, deceives, or deters, or attempts to influence, deceive, or deter, any person in the free exercise of that person's right to sign a petition or petition-revocation form, upon the first conviction commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and, upon any subsequent conviction,

commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) A person may not provide or receive compensation that is based, directly or indirectly, upon the number of signatures obtained on petition or petition-revocation forms. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and, upon any subsequent conviction, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) A person who alters the petition or petition-revocation form signed by any other person without the other person's knowledge and consent commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and, upon any subsequent conviction, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(9) A person perpetrating, or attempting to perpetrate or aid in the perpetration of, any fraud in connection with obtaining the signature of electors on petition or petition-revocation forms commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and, upon any subsequent conviction, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(10) In addition to any other penalty provided for by law, if a paid petition circulator, as defined in s. 100.372(1), violates any provision of this section, the commission may, pursuant to s. 106.265, impose a civil penalty in the form of a

fine not to exceed $1,000 per violation on such paid petition circulator.

Section 12. Section 104.42, Florida Statutes, is amended to read:

104.42 Unlawful registrations, petitions, petition revocations, ~~Fraudulent registration~~ and ~~illegal~~ voting; investigation.--

(1) The supervisor of elections is authorized to investigate unlawful ~~fraudulent~~ registrations, petitions, petition revocations, and ~~illegal~~ voting and to report his or her findings to the local state attorney, the Department of Law Enforcement, and the Florida Elections Commission.

(2) The board of county commissioners in any county may appropriate funds to the supervisor of elections for the purpose of investigating unlawful ~~fraudulent~~ registrations, petitions, petition revocations, and ~~illegal~~ voting.

(3) The supervisor of elections shall document and report suspected unlawful registrations, petitions, petition revocations, and voting to the Florida Elections Commission within 10 days after acquiring reasonable suspicion concerning the lawfulness of the registrations, petitions, petition revocations, and voting.

Section 13. Any signature gathered on a previously approved initiative petition form that has been submitted for verification before August 1, 2006, may be verified and counted, if otherwise valid. However, any initiative petition form that is submitted for verification on or after that date may be verified and counted only if it complies with this act and has

been approved by the Secretary of State before obtaining elector signatures.

Section 14. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 15. Except as otherwise expressly provided in this act, this act shall take effect August 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0773**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative Goodlette offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (1), (3), and (4) of section 99.097, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

99.097 Verification of signatures on petitions.--

(1) As determined by each supervisor, based upon local conditions, the verification of signatures ~~checking of names~~ on petitions may be based on the most inexpensive and administratively feasible of either of the following methods of verification:

(a) A name-by-name, signature-by-signature check of the number of valid ~~authorized~~ signatures on the petitions; or

(b) A check of a random sample, as provided by the Department of State, of names and signatures on the petitions. The sample must be such that a determination can be made as to whether or not the required number of valid signatures has ~~have~~ been obtained with a reliability of at least 99.5 percent. Rules

and guidelines for this method of petition verification shall be adopted ~~promulgated~~ by the Department of State, which may include a requirement that petitions bear an additional number of names and valid signatures, not to exceed 15 percent of the names and valid signatures otherwise required. If the petitions do not meet such criteria, then the use of the verification method described in this paragraph shall not be available to supervisors.

Notwithstanding any other provision of law, petitions to secure ballot placement for an issue, and petition revocations directed thereto pursuant to s. 100.371, must be verified by the method provided in paragraph (a).

(3)(a) A signature ~~name~~ on a petition, in a name that ~~which name~~ is not in substantially the same form as a name on the voter registration books, shall be counted as a valid signature if, after comparing the signature on the petition with the signature of the alleged signer as shown on the registration books, the supervisor determines that the person signing the petition and the person who registered to vote are one and the same. In any situation in which this code requires the form of the petition to be prescribed by the division, no signature shall be counted toward the number of signatures required unless it is on a petition form prescribed by the division.

(b) If a voter signs a petition and lists an address other than the legal residence where the voter is registered, the supervisor shall treat the signature as if the voter had listed the address where the voter is registered.

(4)(a) The supervisor shall be paid in advance the sum of 10 cents for each signature verified ~~checked~~ or the actual cost of verifying ~~checking~~ such signature, whichever is less, by the

candidate or, in the case of a petition to have an issue placed on the ballot by initiative, by the initiative sponsor ~~person or organization submitting the petition~~. However, if a candidate or initiative sponsor~~, person, or organization seeking to have an issue placed upon the ballot~~ cannot pay such charges without imposing an undue burden on personal resources or upon the resources otherwise available to such candidate or initiative sponsor, ~~person, or organization,~~ such candidate or initiative sponsor~~, person, or organization~~ shall, upon written certification of such inability given under oath to the supervisor, be entitled to have the signatures verified at no charge. In the event a candidate or initiative sponsor~~, person, or organization submitting a petition to have an issue placed upon the ballot~~ is entitled to have the signatures verified at no charge, the supervisor of elections of each county in which the signatures are verified at no charge shall submit the total number of such signatures checked in the county to the Chief Financial Officer no later than December 1 of the general election year, and the Chief Financial Officer shall cause such supervisor of elections to be reimbursed from the General Revenue Fund in an amount equal to 10 cents for each signature verified ~~name checked~~ or the actual cost of verifying ~~checking~~ such signatures, whichever is less. In no event shall such reimbursement of costs be deemed or applied as extra compensation for the supervisor. Petitions shall be retained by the supervisors for a period of 1 year following the election for which the petitions were circulated.

(b) An initiative sponsor that has filed a certification of undue burden may not provide compensation to any paid petition circulator, as defined in s. 100.371, unless the initiative sponsor first pays all supervisors for each signature

verified or reimburses the General Revenue Fund for such costs. If an initiative sponsor subject to this paragraph provides compensation to a paid petition circulator before the date the initiative sponsor pays all supervisors for each signature verified or reimburses the General Revenue Fund for such costs, no signature on a petition circulated by the paid petition circulator before that date may be counted toward the number of valid signatures required for ballot placement until the initiative sponsor pays all supervisors for each signature checked or reimburses the General Revenue Fund for such costs.

(6)(a) The alleged improper verification of a signature on a petition to secure ballot placement for an issue pursuant to this code may be contested in the circuit court by a political committee or by an elector. The contestant shall file a complaint setting forth the basis of the contest, together with the fees prescribed in chapter 28, with the clerk of the circuit court in the county in which the petition is certified or in Leon County if the complaint is directed to petitions certified in more than one county.

(b) If the contestant demonstrates by a preponderance of the evidence that one or more petitions were improperly verified, the signatures appearing on such petitions may not be counted toward the number of valid signatures required for ballot placement. If an action brought under this subsection is resolved after the Secretary of State has issued a certificate of ballot position for the issue, but the contestant demonstrates that the person or organization submitting the petition had obtained verification of an insufficient number of valid and verified signatures to qualify for ballot placement, the issue shall be removed from the ballot or, if such action is

impractical, any votes cast for or against the issue may not be counted and shall be invalidated.

(c) An action under this subsection must be commenced no later than 90 days after the Secretary of State issues a certificate of ballot position for the issue.

Section 2. Section 100.371, Florida Statutes, is amended to read:

100.371 Initiatives; procedure for placement on ballot.--

(1) Constitutional amendments proposed by initiative shall be placed on the ballot for the general election if an initiative petition is filed with the Secretary of State by February 1 of the year in which the general election is to be held ~~occurring in excess of 90 days from the certification of ballot position by the Secretary of State~~.

(2) Certification of ballot position ~~Such certification~~ shall be issued when the Secretary of State has received verification certificates from the supervisors of elections indicating that the requisite number and distribution of valid petitions bearing the signatures of electors have been submitted to and verified by the supervisors. Every signature shall be dated by the elector when made. Signatures are ~~and shall be~~ valid for a period of 4 years following such date, provided all other requirements of law are satisfied ~~complied with~~.

(3) The sponsor of an initiative amendment shall, prior to obtaining any signatures, register as a political committee pursuant to s. 106.03 and submit the text of the proposed amendment to the Secretary of State, with the form on which the signatures will be affixed, and shall obtain the approval of the Secretary of State of such form. The form shall consist of a single card or sheet of paper unconnected with any other card or sheet of paper and shall be circulated for signatures in this

format. The division ~~Secretary of State~~ shall adopt rules pursuant to s. 120.54 prescribing the style and requirements of such form. Upon filing with the Secretary of State, the text of the proposed amendment and all forms filed in connection with this section must, upon request, be made available in alternative formats. The contents of a petition form are limited to those items required by statute or rule. A petition form is a political advertisement as defined in s. 106.011 and, as such, must comply with all relevant requirements of chapter 106.

(4) The supervisor of elections shall record the date each petition form is received by the supervisor and the date the signature on the form is verified as valid. The supervisor shall verify that the signature on a petition form is valid only if the form complies with all of the following:

(a) The form must contain the original signature of the purported elector.

(b) The purported elector must accurately record on the form the date on which he or she signed the form.

(c) The date the elector signed the form, as recorded by the elector, must be no more than 35 days before the date the form is received by the supervisor of elections.

(d) The form must accurately set forth the purported elector's name, street address, county, and voter registration number or date of birth.

(e) The purported elector must be, at the time he or she signs the form, a duly qualified and registered elector authorized to vote in the county in which his or her signature is submitted.

(5) An elector's signature on a petition form may be revoked by submitting to the appropriate supervisor of elections a signed petition-revocation form adopted by rule for this

purpose by the division. The petition-revocation form is subject to the same relevant requirements as the corresponding petition form under this code and must be approved by the Secretary of State before any signature is obtained. The petition-revocation form shall be filed with the supervisor of elections no later than the February 1 preceding the next general election or, if the initiative amendment is not certified for ballot position in that election, no later than the February 1 preceding the next successive general election. The supervisor of elections shall promptly verify the signature on the petition-revocation form and process such revocation within 30 days after receiving payment, in advance, of a fee of 10 cents or the actual cost of verifying such signature, whichever is less.

(6)(a) If a person is presented with a petition form or petition-revocation form for his or her possible signature by a petition circulator, the person must record this fact on the form and the name and address of the petition circulator must legibly appear on the form before the signature on the form may be verified by the supervisor. For purposes of this subsection, the term "petition circulator" means any person who, in the context of a direct face-to-face conversation, presents to another person for his or her possible signature a petition form or petition-revocation form regarding ballot placement for an initiative.

(b) A paid petition circulator shall, when engaged in the activities described in paragraph (a), wear a prominent badge, in a form and manner prescribed by rule by the division, identifying him or her as a "PAID PETITION CIRCULATOR." For purposes of this paragraph, the term "paid petition circulator" means a petition circulator who receives any compensation as a direct or indirect consequence of these activities.

(7) In addition to any other practice or action permissible under law, an owner, lessee, or other person lawfully exercising control over private property may:

(a) Prohibit persons from engaging in activity on the property that supports or opposes initiatives;

(b) Permit or prohibit persons from engaging in activity on the property in support of or opposition to a particular initiative; or

(c) Permit persons to engage in activity on the property that supports or opposes initiatives, subject to restrictions with respect to time, place, and manner which are reasonable and uniformly applied.

(8) A signed petition form or petition-revocation form regarding ballot placement for an initiative that does not fully comply with the applicable provisions of this code, or that was obtained in violation of the applicable provisions of this code, may be verified by the supervisor of elections and counted toward the number of valid signatures required for ballot placement only after those deficiencies or violations are corrected.

(9)~~(4)~~ The sponsor shall submit signed and dated forms to the appropriate supervisor of elections for verification as to the number of registered electors whose valid signatures appear thereon. The supervisor shall promptly verify the signatures within 30 days after receiving ~~upon~~ payment, in advance, of the fee required by s. 99.097. Upon completion of verification, the supervisor shall execute a certificate indicating the total number of signatures checked, the number of signatures verified as valid and as being of registered electors, the number of signatures validly revoked pursuant to subsection (5), and the distribution of such signatures by congressional district. This

certificate shall be immediately transmitted to the Secretary of State. The supervisor shall retain the signed petition ~~signature~~ forms and petition-revocation forms for at least 1 year following the election in which the issue appeared on the ballot or until the Division of Elections notifies the supervisors of elections that the committee which circulated the petition is no longer seeking to obtain ballot position.

(10)~~(5)~~ The Secretary of State shall determine from the verification certificates received from supervisors of elections the total number of verified valid signatures and the distribution of such signatures by congressional districts. Upon a determination that the requisite number and distribution of valid signatures have been obtained, the secretary shall issue a certificate of ballot position for that proposed amendment and shall assign a designating number pursuant to s. 101.161. A petition shall be deemed to be filed with the Secretary of State upon the date of the receipt by the secretary of a certificate or certificates from supervisors of elections indicating that valid and verified ~~the~~ petition forms have ~~has~~ been signed by the constitutionally required number and distribution of electors pursuant to this code, subject to the right of revocation established in this section.

(11)~~(6)~~(a) Within 45 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary of State ~~or, within 30 days after such receipt if receipt occurs 120 days or less before the election at which the question of ratifying the amendment will be presented~~, the Financial Impact Estimating Conference shall complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments resulting from

the proposed initiative. The ballot must include a statement, as prescribed by rule of the Department of State, to the effect that the financial impact statement is required under the State Constitution and the Florida Statutes and should not be construed as an endorsement by the state of the proposed revision or amendment to the State Constitution. The Financial Impact Estimating Conference shall submit the financial impact statement to the Attorney General and Secretary of State.

(b)1. The Financial Impact Estimating Conference shall provide an opportunity for any proponents or opponents of the initiative to submit information and may solicit information or analysis from any other entities or agencies, including the Office of Economic and Demographic Research. All meetings of the Financial Impact Estimating Conference shall be open to the public as provided in chapter 286.

2. The Financial Impact Estimating Conference is established to review, analyze, and estimate the financial impact of amendments to or revisions of the State Constitution proposed by initiative. The Financial Impact Estimating Conference shall consist of four principals: one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research, or his or her designee; one person from the professional staff of the Senate; and one person from the professional staff of the House of Representatives. Each principal shall have appropriate fiscal expertise in the subject matter of the initiative. A Financial Impact Estimating Conference may be appointed for each initiative.

3. Principals of the Financial Impact Estimating Conference shall reach a consensus or majority concurrence on a clear and unambiguous financial impact statement, no more than

75 words in length, and immediately submit the statement to the Attorney General. Nothing in this subsection prohibits the Financial Impact Estimating Conference from setting forth a range of potential impacts in the financial impact statement. Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting. The Financial Impact Estimating Conference shall redraft the financial impact statement within 15 days.

4. If the members of the Financial Impact Estimating Conference are unable to agree on the statement required by this subsection, or if the Supreme Court has rejected the initial submission by the Financial Impact Estimating Conference and no redraft has been approved by the Supreme Court by April 1 of the year in which the general election is to be held ~~5 p.m. on the 75th day before the election~~, the following statement shall appear on the ballot pursuant to s. 101.161(1): "The financial impact of this measure, if any, cannot be reasonably determined at this time."

(c) The financial impact statement must be separately contained and be set forth after the ballot summary as required in s. 101.161(1).

(d)1. Any financial impact statement that the Supreme Court finds not to be in accordance with this subsection shall be remanded solely to the Financial Impact Estimating Conference for redrafting, provided the court's advisory opinion is rendered by April 1 of the year in which the general election is to be held ~~at least 75 days before the election at which the question of ratifying the amendment will be presented~~. The Financial Impact Estimating Conference shall prepare and adopt a

revised financial impact statement no later than 5 p.m. on the 15th day after the date of the court's opinion.

2. If, by 5 p.m. on April 1 of the year in which the general election is to be held ~~the 75th day before the election~~, the Supreme Court has not issued an advisory opinion on the initial financial impact statement prepared by the Financial Impact Estimating Conference for an initiative amendment that otherwise meets the legal requirements for ballot placement, the financial impact statement shall be deemed approved for placement on the ballot.

3. In addition to the financial impact statement required by this subsection, the Financial Impact Estimating Conference shall draft an initiative financial information statement. The initiative financial information statement should describe in greater detail than the financial impact statement any projected increase or decrease in revenues or costs that the state or local governments would likely experience if the ballot measure were approved. If appropriate, the initiative financial information statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context. The initiative financial information statement must include both a summary of not more than 500 words and additional detailed information that includes the assumptions that were made to develop the financial impacts, workpapers, and any other information deemed relevant by the Financial Impact Estimating Conference.

4. The Department of State shall have printed, and shall furnish to each supervisor of elections, a copy of the summary from the initiative financial information statements. The supervisors shall have the summary from the initiative financial

information statements available at each polling place and at the main office of the supervisor of elections upon request.

5. The Secretary of State and the Office of Economic and Demographic Research shall make available on the Internet each initiative financial information statement in its entirety. In addition, each supervisor of elections whose office has a website shall post the summary from each initiative financial information statement on the website. Each supervisor shall include the Internet addresses for the information statements on the Secretary of State's and the Office of Economic and Demographic Research's websites in the publication or mailing required by s. 101.20.

(12) ~~(7)~~ The division ~~Department of State~~ may adopt rules in accordance with s. 120.54 to carry out this section ~~the provisions of subsections (1)-(6)~~.

Section 3. Section 28 of chapter 2005-278, Laws of Florida, is repealed.

Section 4. Effective January 1, 2007, section 100.371, Florida Statutes, as amended by this act, is amended to read:

100.371 Initiatives; procedure for placement on ballot.--

(1) Constitutional amendments proposed by initiative shall be placed on the ballot for the general election if an initiative petition is filed with the Secretary of State by February 1 of the year in which the general election is to be held. A petition shall be deemed to be filed with the Secretary of State upon the date that the secretary determines that valid and verified petitions have been signed by the constitutionally required number and distribution of electors pursuant to this code, subject to the right of revocation established in this section.

~~(2) Certification of ballot position shall be issued when the Secretary of State has received verification certificates from the supervisors of elections indicating that the requisite number and distribution of valid petitions bearing the signatures of electors have been submitted to and verified by the supervisors. Every signature shall be dated by the elector when made. Signatures are valid for a period of 4 years following such date, provided all other requirements of law are satisfied.~~

(2)~~(3)~~ The sponsor of an initiative amendment shall, prior to obtaining any signatures, register as a political committee pursuant to s. 106.03 and submit the text of the proposed amendment to the Secretary of State, with the form on which the signatures will be affixed, and shall obtain the approval of the Secretary of State of such form. The form shall consist of a single card or sheet of paper unconnected with any other card or sheet of paper and shall be circulated for signatures in this format. The division shall adopt rules pursuant to s. 120.54 prescribing the style and requirements of such form. Upon filing with the Secretary of State, the text of the proposed amendment and all forms filed in connection with this section must, upon request, be made available in alternative formats. The contents of a petition form are limited to those items required by statute or rule. A petition form is a political advertisement as defined in s. 106.011 and, as such, must comply with all relevant requirements of chapter 106.

(3)~~(4)~~ The supervisor of elections shall record the date each petition form is received by the supervisor and the date the signature on the form is verified as valid. The supervisor shall also promptly record these dates in the statewide voter registration system in the manner prescribed by the Secretary of

State. The supervisor shall verify that the signature on a petition form is valid only if the form complies with all of the following:

(a) The form must contain the original signature of the purported elector;

(b) The purported elector must accurately record on the form the date on which he or she signed the form;

(c) The date the elector signed the form, as recorded by the elector, must be no more than 35 days before the date the form is received by the supervisor of elections;

(d) The form must accurately set forth the purported elector's name, street address, county, and voter registration number or date of birth; and

(e) The purported elector must be, at the time he or she signs the form, a duly qualified and registered elector authorized to vote in the county in which his or her signature is submitted.

(4) ~~(5)~~ An elector's signature on a petition form may be revoked by submitting to the appropriate supervisor of elections a signed petition-revocation form adopted by rule for this purpose by the division. The petition-revocation form is subject to the same relevant requirements as the corresponding petition form under this code and must be approved by the Secretary of State before any signature is obtained. The petition-revocation form shall be filed with the supervisor of elections no later than the February 1 preceding the next general election or, if the initiative amendment is not certified for ballot position in that election, no later than the February 1 preceding the next successive general election. The supervisor of elections shall promptly verify the signature on the petition-revocation form and process such revocation within 30 days after receiving

payment, in advance, of a fee of 10 cents or the actual cost of verifying such signature, whichever is less. The supervisor shall promptly record each valid petition-revocation in the statewide voter registration system in the manner prescribed by the Secretary of State.

(5)~~(6)~~(a) If a person is presented with a petition form or petition-revocation form for his or her possible signature by a petition circulator, the person must record this fact on the form and the name and address of the petition circulator must legibly appear on the form before the signature on the form may be verified by the supervisor. For purposes of this subsection, the term "petition circulator" means any person who, in the context of a direct face-to-face conversation, presents to another person for his or her possible signature a petition form or petition-revocation form regarding ballot placement for an initiative.

(b) A paid petition circulator shall, when engaged in the activities described in paragraph (a), wear a prominent badge, in a form and manner prescribed by rule by the division, identifying him or her as a "PAID PETITION CIRCULATOR." For purposes of this paragraph, the term "paid petition circulator" means a petition circulator who receives any compensation as a direct or indirect consequence of these activities.

(6)~~(7)~~ In addition to any other practice or action permissible under law, an owner, lessee, or other person lawfully exercising control over private property may:

(a) Prohibit persons from engaging in activity on the property that supports or opposes initiatives;

(b) Permit or prohibit persons from engaging in activity on the property in support of or opposition to a particular initiative; or

(c) Permit persons to engage in activity on the property that supports or opposes initiatives, subject to restrictions with respect to time, place, and manner which are reasonable and uniformly applied.

(7) ~~(8)~~ A signed petition form or petition-revocation form regarding ballot placement for an initiative that does not fully comply with the applicable provisions of this code, or that was obtained in violation of the applicable provisions of this code, may be verified by the supervisor of elections and counted toward the number of valid signatures required for ballot placement only after those deficiencies or violations are corrected.

(8) ~~(9)~~ Each signature shall be dated by the elector when made and shall be valid for a period of 4 years following such date, if all other requirements of law are met. The sponsor shall submit signed and dated forms to the appropriate supervisor of elections for verification as to the number of registered electors whose valid signatures appear thereon. The supervisor shall promptly verify the signatures within 30 days after receiving payment, in advance, of the fee required by s. 99.097. The supervisor shall promptly record each petition form verified as valid in the statewide voter registration system in the manner prescribed by the Secretary of State ~~Upon completion of verification, the supervisor shall execute a certificate indicating the total number of signatures checked, the number of signatures verified as valid and as being of registered electors, the number of signatures validly revoked pursuant to subsection (5), and the distribution of such signatures by congressional district. This certificate shall be immediately transmitted to the Secretary of State~~. The supervisor shall retain the signed petition forms and petition-revocation forms

for at least 1 year following the election in which the issue appeared on the ballot or until the Division of Elections notifies the supervisors of elections that the committee which circulated the petition is no longer seeking to obtain ballot position.

(9) ~~(10)~~ The Secretary of State shall determine from the signatures verified by the ~~verification certificates received from~~ supervisors of elections and recorded in the statewide voter registration system the total number of verified valid signatures and the distribution of such signatures by congressional districts. Upon a determination that the requisite number and distribution of valid signatures have been obtained, the secretary shall issue a certificate of ballot position for that proposed amendment and shall assign a designating number pursuant to s. 101.161. ~~A petition shall be deemed to be filed with the Secretary of State upon the date of the receipt by the secretary of a certificate or certificates from supervisors of elections indicating that valid and verified petition forms have been signed by the constitutionally required number and distribution of electors pursuant to this code, subject to the right of revocation established in this section.~~

(10) ~~(11)~~ (a) Within 45 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary of State, the Financial Impact Estimating Conference shall complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative. The ballot must include a statement, as prescribed by rule of the Department of State, to the effect that the financial impact statement is required under the State Constitution and the

Florida Statutes and should not be construed as an endorsement by the state of the proposed revision or amendment to the State Constitution. The Financial Impact Estimating Conference shall submit the financial impact statement to the Attorney General and Secretary of State.

(b)1. The Financial Impact Estimating Conference shall provide an opportunity for any proponents or opponents of the initiative to submit information and may solicit information or analysis from any other entities or agencies, including the Office of Economic and Demographic Research. All meetings of the Financial Impact Estimating Conference shall be open to the public as provided in chapter 286.

2. The Financial Impact Estimating Conference is established to review, analyze, and estimate the financial impact of amendments to or revisions of the State Constitution proposed by initiative. The Financial Impact Estimating Conference shall consist of four principals: one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research, or his or her designee; one person from the professional staff of the Senate; and one person from the professional staff of the House of Representatives. Each principal shall have appropriate fiscal expertise in the subject matter of the initiative. A Financial Impact Estimating Conference may be appointed for each initiative.

3. Principals of the Financial Impact Estimating Conference shall reach a consensus or majority concurrence on a clear and unambiguous financial impact statement, no more than 75 words in length, and immediately submit the statement to the Attorney General. Nothing in this subsection prohibits the Financial Impact Estimating Conference from setting forth a

range of potential impacts in the financial impact statement. Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting. The Financial Impact Estimating Conference shall redraft the financial impact statement within 15 days.

4. If the members of the Financial Impact Estimating Conference are unable to agree on the statement required by this subsection, or if the Supreme Court has rejected the initial submission by the Financial Impact Estimating Conference and no redraft has been approved by the Supreme Court by April 1 of the year in which the general election is to be held, the following statement shall appear on the ballot pursuant to s. 101.161(1): "The financial impact of this measure, if any, cannot be reasonably determined at this time."

(c) The financial impact statement must be separately contained and be set forth after the ballot summary as required in s. 101.161(1).

(d)1. Any financial impact statement that the Supreme Court finds not to be in accordance with this subsection shall be remanded solely to the Financial Impact Estimating Conference for redrafting, provided the court's advisory opinion is rendered by April 1 of the year in which the general election is to be held. The Financial Impact Estimating Conference shall prepare and adopt a revised financial impact statement no later than 5 p.m. on the 15th day after the date of the court's opinion.

2. If, by 5 p.m. on April 1 of the year in which the general election is to be held, the Supreme Court has not issued an advisory opinion on the initial financial impact statement prepared by the Financial Impact Estimating Conference for an

initiative amendment that otherwise meets the legal requirements for ballot placement, the financial impact statement shall be deemed approved for placement on the ballot.

3. In addition to the financial impact statement required by this subsection, the Financial Impact Estimating Conference shall draft an initiative financial information statement. The initiative financial information statement should describe in greater detail than the financial impact statement any projected increase or decrease in revenues or costs that the state or local governments would likely experience if the ballot measure were approved. If appropriate, the initiative financial information statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context. The initiative financial information statement must include both a summary of not more than 500 words and additional detailed information that includes the assumptions that were made to develop the financial impacts, workpapers, and any other information deemed relevant by the Financial Impact Estimating Conference.

4. The Department of State shall have printed, and shall furnish to each supervisor of elections, a copy of the summary from the initiative financial information statements. The supervisors shall have the summary from the initiative financial information statements available at each polling place and at the main office of the supervisor of elections upon request.

5. The Secretary of State and the Office of Economic and Demographic Research shall make available on the Internet each initiative financial information statement in its entirety. In addition, each supervisor of elections whose office has a website shall post the summary from each initiative financial information statement on the website. Each supervisor shall

include the Internet addresses for the information statements on the Secretary of State's and the Office of Economic and Demographic Research's websites in the publication or mailing required by s. 101.20.

(11)~~(12)~~ The division may adopt rules in accordance with s. 120.54 to carry out this section.

Section 5. Subsection (1) of section 101.161, Florida Statutes, is amended to read:

101.161 Referenda; ballots.--

(1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. Except for amendments and ballot language proposed by joint resolution, the substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. In addition, for every amendment proposed by initiative, the ballot shall include, following the ballot summary, a separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(11) ~~s. 100.371(6)~~. The ballot title shall consist of a caption, not exceeding 15 words

in length, by which the measure is commonly referred to or spoken of.

Section 6. Section 33 of chapter 2005-278, Laws of Florida, is repealed.

Section 7. Effective January 1, 2007, subsection (1) of section 101.161, Florida Statutes, as amended by this act, is amended to read:

101.161 Referenda; ballots.--

(1) Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. Except for amendments and ballot language proposed by joint resolution, the substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. In addition, for every amendment proposed by initiative, the ballot shall include, following the ballot summary, a separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(10) ~~s. 100.371(11)~~. The ballot title shall consist of a caption, not exceeding 15 words

in length, by which the measure is commonly referred to or spoken of.

Section 8. Any signature gathered on a previously approved initiative petition form that has been submitted for verification before August 1, 2006, may be verified and counted, if otherwise valid. However, any initiative petition form that is submitted for verification on or after that date may be verified and counted only if it complies with this act and has been approved by the Secretary of State before obtaining elector signatures.

Section 9. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 10. Except as otherwise expressly provided in this act, this act shall take effect August 1, 2006.

========== T I T L E A M E N D M E N T ==========

Remove the entire title and insert:

A bill to be entitled

An act relating to initiative procedures and standards; amending s. 99.097, F.S.; revising requirements for verification of signatures on petitions; providing requirements for initiative sponsors filing for undue burden; providing procedures to contest alleged improper signature verification; repealing s. 28, ch. 2005-278, Laws of Florida, relating to procedures for placement of initiatives on the ballot; amending s. 100.371, F.S.; revising procedures for placing an initiative on the

ballot; providing requirements for information to be contained on petitions; providing procedure for revocation of a petition signature; requiring a statement on the ballot regarding the financial impact statement; providing regulation for initiative petition circulators and their activities; repealing s. 33, ch. 2005-278, Laws of Florida, relating to referenda and ballots; amending s. 101.161, F.S.; conforming a cross-reference; providing for verifying and counting signatures submitted for verification before the effective date of the act; providing severability; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 905 Transportation Concurrency Management
SPONSOR(S): Goodlette and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1862

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	Grayson	Hamby
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

HB 905 expressly provides local governments with the authority to impose stricter concurrency requirements than those provided in existing law. Concurrency is a growth management concept intended to ensure that the necessary public facilities and services are available concurrent with the impacts of development. Specifically, existing law provides that transportation facilities needed to serve new development must be in place or under construction within 3 years after local government approves either a building permit, or its functional equivalent, that results in traffic generation. The bill allows local government to establish a shorter period of time than 3 years, including "real-time concurrency" which is the ability to require the facilities to be in place prior to permitting development that would result in traffic generation.

The bill changes the effective date of the requirement to adopt a supporting comprehensive plan amendment in conjunction with a transportation concurrency exception area (TCEA). This mechanism is used to provide for an exception to the concurrency requirements under certain conditions when facilities concurrency conflicts with other public policy goals and leads to the discouragement of urban infill development and redevelopment. Existing law requires such a supporting amendment even for existing TCEAs. The bill applies that requirement only to TCEAs granted after July 1, 2006.

The bill changes existing law to allow for alternative means, rather than a single method (proportionate fair-share mitigation), to mitigate the impacts of development on transportation facilities.

The bill does not appear to have a fiscal impact on state resources. The bill may increase the demand for local expenditures to ensure that transportation facilities are funded and in place in tandem with development demand.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill allows local government to be more restrictive in implementing transportation facilities concurrency. If local government chooses to be more restrictive than the state standard, then such action could be considered to either limit government by decentralizing the implementation standard or increase government by further restricting when development may occur.

Safeguard individual liberty – The bill allows local government to be more restrictive in implementing transportation facilities concurrency. Thus, if local government chooses a more restrictive implementation, then such action could be considered to decrease or prohibit a private organization (developer) in the conduct of its affairs.

B. EFFECT OF PROPOSED CHANGES:

Background

Transportation Concurrency - CS/CS/CS SB 360 (2005)

The 2005 Legislature enacted CS/CS/CS SB 360 relating to infrastructure funding and planning (ch. 2005-290, L.O.F., the "2005 Act"). Among other revisions to existing law, the act provides for stricter facilities concurrency than existed in prior law. Concurrency is a growth management concept intended to ensure that the necessary public facilities and services are available concurrent with the impacts of development. One of the types of facilities to which concurrency applies under the 2005 Act is transportation facilities. Specifically, the 2005 Act provided that *transportation facilities must be in place or under actual construction within 3 years from the local government's approval of a building permit or its functional equivalent that results in traffic generation.* To carry out transportation concurrency, local governments must define what constitutes an adequate level of service and measure whether the service needs of a new development exceed existing capacity and any scheduled improvements in the capital improvements element of the local government's comprehensive plan.

Transportation Concurrency Exception Areas

The law provides that under limited circumstances, the requirement for transportation facilities concurrency conflicts with other public policy goals and leads to the discouragement of urban infill development and redevelopment. In such instances, existing law allows a local government to designate a transportation concurrency exception area (TCEA) to provide for an exception to the concurrency requirements. This results in an increase in the number of people and goods that need to move around within the TCEA and means that their mobility must be addressed in ways other than the traditional provision of roads. When a local government chooses to designate a TCEA, they must follow certain requirements in the law. Among those requirements is the adoption of a comprehensive plan amendment that supports the designated area in the ways outlined below.

- Implements strategies to support and fund mobility within the TCEA, including alternative modes of transportation.
- Demonstrates how strategies will support the purpose of the exception area and how mobility within the exception area will be provided.
- Addresses urban design; appropriate land use mixes, including intensity and density; and network connectivity plans needed to promote urban infill, redevelopment, or downtown revitalization.
- Be accompanied by data and analysis justifying the size of the area.

Proportionate Fair-Share Mitigation

The 2005 Act established a single method by which development could proceed ahead of supporting transportation facilities. The method is referred to as "proportionate fair-share mitigation." The intent of proportionate fair-share mitigation is to provide applicants for development an opportunity to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their share of the cost of improving the impacted transportation facility.

A developer may choose to satisfy transportation concurrency requirements by contributing or paying "proportionate fair-share mitigation" for those facilities or segments that are identified in the 5-year schedule of capital improvements. If the funds in an adopted 5-year schedule are insufficient to fully fund construction of the transportation improvements required by the local government's transportation concurrency management system, the local government may still enter into a binding proportionate share agreement with the developer. This agreement would allow a developer to construct the amount of development on which the proportionate fair share is calculated if the amount in the agreement is sufficient to pay for an improvement that will, in the opinion of a governmental entity, significantly benefit the impacted transportation system.

Effect of Proposed Changes

Stricter concurrency requirements: HB 905 expressly allows local government to adopt a stricter concurrency requirement, including real-time concurrency, than that provided in existing law. Existing law, which does not expressly provide authority to establish stricter concurrency standards, does provide that transportation facilities needed to serve new development must be in place or under construction within 3 years after local government approves either a building permit, or its functional equivalent, that results in traffic generation. Thus, under the bill, a local government may choose to require that such facilities need to be in place, or under construction, within any time period shorter than 3 years, after issuance of the building permit. Additionally, the bill expressly allows local government to establish "real-time concurrency" which would mean that no development would be allowed to proceed until "adequate transportation facilities are in place."

Transportation concurrency exception areas: Existing law requires that a local government that has designated a transportation concurrency exception area must also adopt a comprehensive plan amendment to support the exception area. The bill changes the effective date of the requirement to adopt such a comprehensive plan amendment. The bill only requires such a comprehensive plan amendment for those exception areas granted after July 1, 2006.

Proportionate Fair-Share Mitigation: The bill changes existing law to allow for alternative means, rather than a single method, to mitigate the impacts of development on transportation facilities. Existing law provides that "proportionate fair-share mitigation" is the sole method for mitigating such impacts. Thus, the bill allows a local government to adopt some alternative manner for mitigating such impacts, rather than being restricted to only using the "proportionate fair-share mitigation" method.

C. SECTION DIRECTORY:

Section 1 – Amends s. 163.3180(2)(c), (5)(e), and (16), F.S., relating to transportation concurrency.

Section 2 – Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state revenues.

2. Expenditures:

The bill does not appear to have an impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local revenues.

2. Expenditures:

The bill may increase the demand for local expenditures to ensure that transportation facilities are funded and in place in tandem with development demand.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an impact on the private sector by limiting when development may proceed in relation to the availability of adequate transportation facilities.

D. FISCAL COMMENTS:

Not applicable.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

The bill does not appear to contain any other constitutional issues.

B. RULE-MAKING AUTHORITY:

The bill does not contain any rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 28 – 34 of the bill may lead to confusion over the intended scope of its application. The new language added to s. 163.3180(2)(c), F.S., specifically states:

> Nothing in *this section* prohibits a local government from adopting stricter concurrency requirements, including real-time concurrency, under which a local government a local government need not issue a building permit or its functional equivalent for a new development under any circumstances that result in traffic generation until adequate transportation facilities are in place. [emphasis provided]

Reference to "this section" may be interpreted to mean the entire s. 163.3180, F.S. It is unclear whether the new provision allows a local government to adopt stricter concurrency requirements solely for transportation facilities by its inclusion into the paragraph relating solely to transportation facilities, or more broadly for any of other facilities addressed in the "section" (i.e., sanitary sewer, solid waste, drainage, potable water, parks and recreation, or schools).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

A bill to be entitled

An act relating to transportation concurrency management; amending s. 163.3180, F.S.; providing an exception to certain in-place or under-actual-construction requirements for transportation facilities serving new developments for certain stricter concurrency requirements by local governments; restricting a requirement that local governments adopt into a plan and implement certain strategies relating to exception areas to circumstances in which an exception is granted; limiting application of certain proportionate fair-share mitigation provisions to circumstances in which a local government elects to use such provisions instead of a concurrency management system; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) of subsection (2), paragraph (e) of subsection (5), and subsection (16) of section 163.3180, Florida Statutes, are amended to read:

163.3180 Concurrency.--

(2)

(c) Consistent with the public welfare, and except as otherwise provided in this section, transportation facilities needed to serve new development shall be in place or under actual construction within 3 years after the local government approves a building permit or its functional equivalent that results in traffic generation. Nothing is this section prohibits

a local government from adopting stricter concurrency requirements, including real-time concurrency, under which a local government need not issue a building permit or its functional equivalent for a new development under any circumstances that result in traffic generation until adequate transportation facilities are in place.

(5)

(e) If a local government grants an exception from the concurrency requirement for transportation facilities pursuant to paragraph (b) after July 1, 2006, the local government shall adopt into the plan and implement strategies to support and fund mobility within the designated exception area, including alternative modes of transportation. The plan amendment shall also demonstrate how strategies will support the purpose of the exception and how mobility within the designated exception area will be provided. In addition, the strategies must address urban design; appropriate land use mixes, including intensity and density; and network connectivity plans needed to promote urban infill, redevelopment, or downtown revitalization. The comprehensive plan amendment designating the concurrency exception area shall be accompanied by data and analysis justifying the size of the area.

(16) It is the intent of the Legislature to provide alternatives ~~a method~~ by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors. If a local government elects to use proportionate fair-share mitigation in lieu of its existing concurrency management system as adopted in its

comprehensive plan, the methodology used to calculate proportionate fair-share mitigation under this section shall be as provided for in subsection (12) and the following provisions shall apply:~~.~~

(a) By December 1, 2006, each local government shall adopt by ordinance a methodology for assessing proportionate fair-share mitigation options. By December 1, 2005, the Department of Transportation shall develop a model transportation concurrency management ordinance with methodologies for assessing proportionate fair-share mitigation options.

(b)1. In its transportation concurrency management system, a local government shall, by December 1, 2006, include methodologies that will be applied to calculate proportionate fair-share mitigation. A developer may choose to satisfy all transportation concurrency requirements by contributing or paying proportionate fair-share mitigation if transportation facilities or facility segments identified as mitigation for traffic impacts are specifically identified for funding in the 5-year schedule of capital improvements in the capital improvements element of the local plan or the long-term concurrency management system or if such contributions or payments to such facilities or segments are reflected in the 5-year schedule of capital improvements in the next regularly scheduled update of the capital improvements element. Updates to the 5-year capital improvements element which reflect proportionate fair-share contributions may not be found not in compliance based on ss. 163.164(32) and 163.3177(3) if additional contributions, payments or funding sources are

reasonably anticipated during a period not to exceed 10 years to fully mitigate impacts on the transportation facilities.

2. Proportionate fair-share mitigation shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the local government's impact fee ordinance.

(c) Proportionate fair-share mitigation includes, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities and may include public funds as determined by the local government. The fair market value of the proportionate fair-share mitigation shall not differ based on the form of mitigation. A local government may not require a development to pay more than its proportionate fair-share contribution regardless of the method of mitigation.

(d) Nothing in this subsection shall require a local government to approve a development that is not otherwise qualified for approval pursuant to the applicable local comprehensive plan and land development regulations.

(e) Mitigation for development impacts to facilities on the Strategic Intermodal System made pursuant to this subsection requires the concurrence of the Department of Transportation.

(f) In the event the funds in an adopted 5-year capital improvements element are insufficient to fully fund construction of a transportation improvement required by the local government's concurrency management system, a local government and a developer may still enter into a binding proportionate-

share agreement authorizing the developer to construct that amount of development on which the proportionate share is calculated if the proportionate-share amount in such agreement is sufficient to pay for one or more improvements which will, in the opinion of the governmental entity or entities maintaining the transportation facilities, significantly benefit the impacted transportation system. The improvement or improvements funded by the proportionate-share component must be adopted into the 5-year capital improvements schedule of the comprehensive plan at the next annual capital improvements element update.

(g) Except as provided in subparagraph (b)1., nothing in this section shall prohibit the Department of Community Affairs from finding other portions of the capital improvements element amendments not in compliance as provided in this chapter.

(h) The provisions of this subsection do not apply to a multiuse development of regional impact satisfying the requirements of subsection (12).

Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **905**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative Goodlette offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (c) of subsection (2) of section 163.3180, Florida Statutes, is amended to read:

(2)

(c) Consistent with the public welfare, and except as otherwise provided in this section, transportation facilities needed to serve new development shall be in place or under actual construction within 3 years after the local government approves a building permit or its functional equivalent that results in traffic generation. Nothing in this section shall prohibit a local government that has adopted a stricter concurrency management system prior to the enactment of Ch. 2005-290, L.O.F. that provides for a shorter time frame than three years from utilizing a stricter concurrency management system and requirements, wherein a local government need not issue a

building permit or its functional equivalent under any circumstances that results in traffic generation until adequate transportation facilities are in place pursuant to its adopted concurrency management system.

Section 2. This act shall take effect July 1, 2006.

========== T I T L E A M E N D M E N T ==========

Remove everything before the enacting clause and insert:

A bill to be entitled

An act related to transportation concurrency management; amending 163.3180, F.S.; providing an exception to certain in-place or under-actual construction requirements for transportation facilities serving new developments for certain stricter concurrency requirements by local governments; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1037 Campaign Financing
SPONSOR(S): Rivera and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2156

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections Committee		Shaffer	Mitchell
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) State Administration Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1037 allows candidates for the Florida House of Representatives to transfer or retain a maximum per election of $50,000 in a campaign account for the same office to which the candidate was elected by virtue of being unopposed. The bill allows candidates for the Florida Senate to transfer or retain a maximum per election of $150,000 in a campaign account for the same office to which the candidate was elected by virtue of being unopposed.

The bill prohibits an unopposed candidate who exercises this option from accepting campaign contributions for one year after the date of qualifying.

HB 1037 is effective July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

HB 1037 does not appear to implicate any House principle.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 106.141, F.S., currently provides for disposition of surplus campaign funds by candidates. Any candidate required to dispose of surplus funds may dispose of them in a variety of ways:

- Return pro rata to each contributor the funds that have not been spent or obligated;
- Donate to a charitable organization or organizations that meet the qualifications of s. 501(c) (3) of the Internal Revenue Code the funds that have not been spent or obligated;
- Give a portion of the funds that have not been spent or obligated to their political party, candidates for the House may give up to $10,000 and candidates for the Senate may give up to $30,000;
- Give the funds in the case of a candidate for state office, to general revenue or the Election Campaign Financing Trust Fund; or
- Give the funds in the case of a candidate for an office of a political subdivision, to such political subdivision.

Section 106.011(15), F.S. defines an "unopposed candidate" as a "candidate for nomination or election to an office who, after the last day on which any person, including a write-in candidate, may qualify, is without opposition in the election at which the office is to be filled or who is without such opposition after such date as a result of any primary election or of withdrawal by other candidates seeking the same office."

An unopposed candidate may transfer a prescribed amount of funds to an office account. A House candidate may transfer up to $10,000; and a Senate candidate $20,000. (s.106.141(5)(c), F.S., provides for funding an office account up to $5,000 multiplied by the number of years in the term of office for which elected.)

If any funds have been received from general revenue as a participant in the matching funds program they must be returned.

Effects of Proposed Changes

HB 1037 allows candidates for the Florida House of Representatives to transfer or retain a maximum per election of $50,000 in a campaign account for the same office to which the candidate was elected by virtue of being unopposed. The bill also allows candidates for the Florida Senate to transfer or retain a maximum per election of $150,000 in a campaign account for the same office to which the candidate was elected by virtue of being unopposed.

Candidates will continue to be able to exercise other options for disposing of surplus funds prescribed in s. 106.141(4), F.S. HB 1037 will provide another option for disposal for unopposed candidates campaign contributions. The bill prohibits an unopposed candidate who exercises this option from accepting campaign contributions for one year after the date of qualifying.

Candidates cannot transfer or retain more than the amounts provided therein ($50,000; $150,000) from one election year to another. For example, an unopposed House candidate in 2006 could retain up to $50,000, but if running unopposed again in 2008 could not transfer or retain another $50,000 for a total of $100,000.

The following table shows the number of unopposed candidates for the three previous election cycles.

Election Year	House candidates elected without opposition
2000	14
2002	18
2004	52

C. SECTION DIRECTORY:

Section 1: Amends s. 106.141, F.S., to allow unopposed candidates for the House of Representatives or the Senate to transfer the funds or to retain the funds in a campaign account for the same office to which the candidate was elected by virtue of being unopposed with a maximum per election of $50,000 for a candidate for the House of Representatives and $150,000 for a candidate for the Senate.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

HB 1037 may have a fiscal impact on charitable and other organizations. The current law, s. 106.141, F.S., requires candidates to dispose of funds in several specified ways, including donating the funds that have not been spent or obligated to a charitable organization or to the candidate's political party, or returning the contributions pro rata to contributors or by giving them to the General Revenue Fund. These entities, which may have otherwise received funds, may not receive them from legislative candidates if the bill is enacted.

D. FISCAL COMMENTS:

HB 1037 will have no significant fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

N/A

B. RULE-MAKING AUTHORITY:

HB 1037 does not grant any rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006the Committee on Ethics & Elections adopted one amendment. The amendment prohibits an unopposed candidate who exercises this option from accepting campaign contributions for one year after the date of qualifying.

CHAMBER ACTION

The Ethics & Elections Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to campaign financing; amending s. 106.141, F.S.; allowing unopposed legislative candidates to transfer surplus campaign funds to or retain such funds in a campaign account for reelection to the same office; establishing limits on the transferable amount of such funds; providing a prohibition from fundraising under certain conditions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (4) of section 106.141, Florida Statutes, is amended to read:

106.141 Disposition of surplus funds by candidates.--

(4)(a) Except as provided in paragraph (b), any candidate required to dispose of funds pursuant to this section shall, at the option of the candidate, dispose of such funds by any of the following means, or any combination thereof:

1. Return pro rata to each contributor the funds that have not been spent or obligated.

2. Donate the funds that have not been spent or obligated to a charitable organization or organizations that meet the qualifications of s. 501(c)(3) of the Internal Revenue Code.

3. Give not more than $10,000 of the funds that have not been spent or obligated to the political party of which such candidate is a member, except that a candidate for the ~~Florida~~ Senate may give not more than $30,000 of such funds to the political party of which the candidate is a member.

4. Give the funds that have not been spent or obligated:

a. In the case of a candidate for state office, to the state, to be deposited in either the Election Campaign Financing Trust Fund or the General Revenue Fund, as designated by the candidate; or

b. In the case of a candidate for an office of a political subdivision, to such political subdivision, to be deposited in the general fund thereof.

5. With respect to an unopposed candidate for the House of Representatives or the Senate, transfer the funds to or retain the funds in a campaign account for the same office to which the candidate was elected by virtue of being unopposed, with a maximum per election of $50,000 for a candidate for the House of Representatives and $150,000 for a candidate for the Senate. An unopposed candidate who exercises this option is prohibited from accepting campaign contributions for one year after the date of qualifying.

Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1037 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations

Representative Bogdanoff offered the following:

Amendment

Remove lines 41 through 49 and insert:

5. With respect to an unopposed candidate for the House of Representatives or the Senate, transfer the funds to or retain the funds in a campaign account for the same office to which the candidate was elected by virtue of being unopposed, with a maximum per election of $50,000 for a candidate for the House of Representatives and $150,000 for a candidate for the Senate. An unopposed candidate for the House of Representatives who exercises this option is prohibited from accepting campaign contributions for the same office for one year after the date of qualifying. An unopposed candidate for the Senate who exercises this option is prohibited from accepting campaign contributions for the same office for two years after the date of qualifying.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1107 Road Designations
SPONSOR(S): Jennings
TIED BILLS: **IDEN./SIM. BILLS:** SB 1664

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	14 Y, 0 N	Rousseau	Miller
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

Section 334.071, F.S., provides for legislative designations of transportation facilities for honorary or memorial purposes, or to distinguish a particular facility. The legislative designations do not "officially" change the current names of the facilities, nor does the statute require local governments and private entities to change street signs, mailing addresses, or 911 emergency telephone-number system listings.

HB 1107 designates that portion of U.S. Highway 301 within Marion and Alachua Counties as "Rosa Parks Memorial Highway."

The Florida Department of Transportation is directed to erect suitable markers to denote the honorary designations. The markers will cost an estimated $800. This does not include maintenance or replacement costs.

HB 1107 does not create any constitutional or other legal issues. It takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

HB 1107 does not implicate any House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation
Section 334.071, F.S., provides for legislative designations of transportation facilities for honorary or memorial purposes, or to distinguish a particular facility. The legislative designations do not "officially" change the current names of the facilities, nor does the statute require local governments and private entities to change street signs, mailing addresses, or 911 emergency telephone-number system listings.

The statute requires the Florida Department of Transportation (FDOT) to place a marker at each terminus or intersection of an identified road or bridge, and to erect other markers it deems appropriate for the transportation facility. The statute also provides that a city or county must pass a resolution in support of a particular designation before road markers are erected. Additionally, if the designated road segment extends through multiple cities or counties, a resolution must be passed by each affected local government.

Based on FDOT records, some 1,079 honorary road and bridge designations have been approved since 1922, most of them by the Legislature. Some public roads and bridges have multiple or overlapping designations.

Effect of HB 1107

HB 1107 designates that portion of U.S. Highway 301 within Marion and Alachua Counties as "Rosa Parks Memorial Highway."

Rosa Parks, often called the "Mother of the Modern Day Civil Rights Movement," sparked the Montgomery Bus Boycott in 1955 by refusing to give her seat to a white male passenger on a segregated bus. She led an active life of community service and began the Rosa and Raymond Parks Institute for Self-Development. Mrs. Parks passed away on October 24, 2005.

The FDOT is directed to erect suitable markers to denote the honorary designations.

C. SECTION DIRECTORY:

Section 1: Designates that portion of U.S. Highway 301 within Marion and Alachua Counties as "Rosa Parks Memorial Highway."

Section 2: Specifies an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

   FDOT estimates that the cost to erect suitable road markers is approximately $800 per designation for a marker at each end of the designated road area. The total signage cost of HB 1107 is $800. The expenditure is from the State Transportation Trust Fund. FDOT also is responsible for any future maintenance and replacement cost, which is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to road designations; designating Rosa Parks Memorial Highway in Alachua and Marion Counties; directing the Department of Transportation to erect suitable markers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Rosa Parks Memorial Highway designated; Department of Transportation to erect suitable markers.--

(1) That portion of U.S. Highway 301 within Marion and Alachua Counties is designated as "Rosa Parks Memorial Highway."

(2) The Department of Transportation is directed to erect suitable markers designating Rosa Parks Memorial Highway as described in subsection (1).

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1173 CS Driver History Records
SPONSOR(S): Ross
TIED BILLS: **IDEN./SIM. BILLS:** SB 2242

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	14 Y, 0 N, w/CS	Thompson	Miller
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1173 provides free internet access to a minor's driver history records for parents, a guardian, or certain other responsible adults. The bill directs the DHSMV to implement a system that allows the parents, a guardian, or other responsible adults who signed a minor's application for a driver's license, to have free access to the minor's driver history record through a secure website. The bill also provides for the termination of this access on the minor's 18th birthday. This internet access would be in addition to current public records access of driver's history records.

Current law requires the Department of Highway Safety and Motor Vehicles (DHSMV) to maintain an individual driver history record of each licensee. The information must be readily available to DHSMV for license renewal and at other suitable times. Driver's history records are regarded as public records and the DHSMV is authorized to charge certain fees for providing driver history records and for assisting in searching driver history records at DHSMV's headquarters in Tallahassee.

This bill may have a minimal, but indeterminate, negative revenue impact on the Highway Safety Operating Trust Fund. Implementation of this bill would also require estimated contracted programming of 800 hours at $185 per hour for a total of $148,000. (See Fiscal Comments section of this analysis.)

The bill would take effect January 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promotes Personal Responsibility & Empowers Families

HB 1173 provides internet access to a minor's driver history records for parents, a guardian, or other responsible adults who signed the minor's application for a driver's license.

B. EFFECT OF PROPOSED CHANGES:

Currently, s. 322.09, F.S., provides that the application of any person under the age of 18 for a driver's license must be signed by the father, mother, or guardian, or, if there is no parent or guardian, by another responsible adult who is willing to assume the financial obligation imposed under chapter 322, F.S. That statutory obligation provides any negligence or willful misconduct of a minor when driving a motor vehicle on a highway shall be imputed to the person who signed the license application. The signing adult is jointly and severally liable with the minor for any damages caused by the minor's negligence or willful misconduct.

Driver history records are public records and are provided by the DHSMV or a contracted agent for the DHSMV. A person's driving history of convictions, crashes, violations that resulted in a person attending school in lieu of points being assessed and any sanctions are all public record and not covered under the Driver Privacy Protection Act (DPPA).

Section 322.20, F.S., provides that the DHSMV must maintain convenient records or notations, so the individual driver history record of each licensee is readily available for review by DHSMV upon application for renewal of a license and at other suitable times. With respect to crashes involving a licensee, the driver history record must not include any notation or record of a motor vehicle crash unless the licensee received a traffic citation as a direct result of the crash.

This section also authorizes the DHSMV's Division of Driver Licenses, upon application of any person and payment of the proper fees, to search for records of the DHSMV, to make reports, and to make photographic copies of the departmental records and attestations. Section 322.20, F.S., authorizes DHSMV to charge certain fees for providing any one individual's driver history records to the public. For example DHSMV charges:

- $3.10 for providing a transcript of any one individual's driver history record for the past 7 years or for searching for such record when no record is found to be on file;
- $1.00 per page for providing a certified photographic copy of a document; and
- $2.00 for assisting persons in searching any one individual's driver record at a terminal located at the department's general headquarters in Tallahassee.

DHSMV must furnish this information without charge to any local, state, or federal law enforcement agency or court upon proof satisfactory to the DHSMV as to the purpose of the investigation. This information is made available by the DHSMV electronically to contracted private vendors that provide it via the internet to the general public. The DHSMV provides this information via mail or walk-ins at the DHSMV headquarters. The DHSMV also contracts with some Clerk of Courts to provide the driver history record to the public.

Currently, the DHSMV provides driver record status checks on all drivers via the department's website. These driver record status checks exhibit the validity of the driver's license and do not provide a record of citations and traffic infractions. A person may obtain a driver record status on any Florida driver record by providing a valid driver license number.

HB 1173 creates the "Jeffrey Klapatch Act". In addition to current driver's history record public access, the bill provides free internet access to a minor's driver history records for parents, a guardian, or other responsible adults. The bill directs the DHSMV to implement a system that allows the parents or a guardian, or other responsible adults who signed a minor's application for a driver's license, to have free access to the minor's driver history record through a secure website. The bill also provides for the termination of this access to the minor's driver history records on the minor's 18th birthday.

C. SECTION DIRECTORY:

Section 1. Gives the act the popular name the "Jeffrey Klapatch Act."

Section 2. Amends s. 322.20, F.S., to provide for the DHSMV to implement a system that provides parents, a guardian, or other responsible adults who signed a minor's driver license application, with internet access to the driver history record of the minor; providing for the termination of internet access to the minor's driver history record when the minor attains 18 years of age.

Section 3. Provides that the act shall take effect January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS Section below.

2. Expenditures:

   See FISCAL COMMENTS Section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill provides that the DHSMV will allow access to the minor's driving history record at no cost to the parents, a guardian, or to the responsible adults who signs giving consent for the minor's application for a driver's license. Therefore, the bill may have a minimal, but indeterminate, negative revenue impact on the Highway Safety Operating Trust Fund due to the free access. The bill also will require programming modifications to the Driver License Software Systems. According to the DHSMV this would require contracted programming of 800 hours at $185 per hour for a total of $148,000.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties

2. Other:

B. RULE-MAKING AUTHORITY:

   DHSMV has sufficient rule-making authority to carry out the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On **March 14, 2006** the Transportation Committee amended HB 1173 to require DHSMV to provide free internet access through a secure website to a minor's driver history records for the minor's parents or guardian, or for another responsible adult who signed the minor's application for a driver's license and to change the effective date of the bill to January 1, 2007.

The committee then voted 14-0 to report the bill favorably with committee substitute.

CHAMBER ACTION

The Transportation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to driver history records; creating the "Jeffrey Klapatch Act"; amending s. 322.20, F.S.; providing for the Division of Driver Licenses of the Department of Highway Safety and Motor Vehicles to implement a system that provides the parents or guardian of a minor or the adult who signed a minor's application for a driver's license with Internet access to the driver history record of the minor; providing that no fee will be charged for such access; providing for termination of such access; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Jeffrey Klapatch Act."

Section 2. Subsections (13), (14), and (15) of section 322.20, Florida Statutes, are renumbered as subsections (14),

(15), and (16), respectively, and a new subsection (13) is added to that section to read:

322.20 Records of the department; fees; destruction of records.--

(13) The Division of Driver Licenses shall implement a system that allows either parent of a minor, or a guardian, or other responsible adult who signed a minor's application for a driver's license to have Internet access through a secure website to inspect the minor's driver history record. Internet access to driver history records granted to a minor's parents, guardian, or other responsible adult shall be furnished by the department at no fee and shall terminate when the minor attains 18 years of age.

Section 3. This act shall take effect January 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1211 CS Notification Regarding the State Minimum Wage
SPONSOR(S): Fields
TIED BILLS: **IDEN./SIM. BILLS:** SB 786

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	12 Y, 0 N, w/CS	Olmedillo	Carlson
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

This bill creates a new section of law requiring each employer who must pay an employee the Florida minimum wage to display a poster in a conspicuous and accessible place at a worksite indicating the applicable wage. The bill requires the Agency for Workforce Innovation (AWI) to create the required posters in English and in Spanish and make them available to employers on or before December 1st of each year. Under this bill, each poster must contain specific language outlining the restrictions on employers, the rights of employees, and the penalties for non-compliance with Florida's minimum wage law. The bill also provides formatting, font and size requirements for the posters.

The bill provides an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: Creates a new law to require posting notice of the state minimum wage.

B. EFFECT OF PROPOSED CHANGES:

Florida Minimum Wage Law

During the 2005 Special Legislative Session (2005B), the Legislature passed, and the Governor approved, SB 18B creating the Florida Minimum Wage Act.[1] This bill implemented the provisions of s. 24, Art. X of the State Constitution which resulted from the passage of Constitutional Amendment #5 on the November 2, 2004, ballot. Senate Bill 18B replicated the provisions of the constitution and added additional provisions to do the following:

- Adopt the U.S. Consumer Price Index for the south region as the applicable index for determining the annual adjustments to the state minimum wage;
- Require the Agency for Workforce Innovation and the Department of Revenue to publish the annually updated minimum wage on their respective websites;
- Require employees to first notify employers before initiating a civil action to enforce their right to receive the state minimum wage;
- Allow employers 15 calendar days to resolve any claims for the unpaid wages before a suit may be filed;
- Limit the damages awarded to employees to only unpaid wages if the court determines the employer acted in good faith and had reasonable grounds for believing that their action was not in violation of the constitution;
- Restrict the court from awarding punitive damages;
- Impose restrictions on class action suits;
- Limit eligibility for the minimum wage to workers who are currently entitled to receive the federal minimum wage under the Fair Labor Standards Act (FLSA) and its associated implementing regulations; and
- Provide that the exemptions outlined in ss. 213 and 214 of FLSA are incorporated into the act by reference.

The Florida Minimum Wage Act does not contain a posting requirement for employers.

States' Minimum Wage Posting Requirement

Currently, several states have minimum wage requirements that differ from the federal minimum wage of $5.15 per hour and $2.13 for tipped employees. As of January 2006, Florida's minimum wage is $6.40 per hour and $3.38 for tipped employees. Eighteen states (including Florida) and the District of Columbia have minimum wages that are higher than the federal minimum wage.[2] Fourteen of those states and the District of Columbia also require employers to post the state minimum wage and related information. The states that have minimum wages higher than the federal wage and adhere to a posting requirement include: Alaska, California, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode

[1] Chapter 2005-353, L.O.F.

[2] Those states include: Alaska, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington and Wisconsin. Information compiled from U.S. Department of Labor, *Minimum Wage Laws in the States,* http:// www.dol.gov/esa/minwage/america.html. December 2006; National Conference of State Legislatures, *State Minimum Wages,* http://www.ncsl.org/programs/employ/stateminimumwages2006.htm. 6 March 2006.

Island, and Vermont. At least two states, Washington and Wisconsin, recommend that minimum wage information be posted, but do not require it.[3]

Almost all of the states that have a posting requirement provide the posters, free of charge, on their Department of Labor website where they can be downloaded by employers and viewed by the public.

Effects of Proposed Changes
The bill sets forth requirements for AWI and employers with regard to posting the minimum wage.

The bill defines the terms "employer," "employee," and "wage," consistent with the meanings assigned to them by the federal Fair Labor Standards Act. The bill also defines "Florida minimum wage" as the wage an employee is required to pay pursuant to s. 24, Article X of the State Constitution.

The bill requires each employer who must pay Florida's minimum wage to prominently display a poster substantially similar to the one described in the bill, which details the Florida minimum wage, restrictions on employers, rights of employees and penalties for non-compliance.

The bill requires AWI to create and make available, on or before December 1 of each year, posters in English and Spanish regarding the minimum wage. The bill also provides the language that must be included in the posters as follows:

- The minimum wage as of January 1 of each year;
- That the minimum wage is calculated yearly on September 30 using the consumer price index and will take effect each January 1st;
- That retaliation by employers against employees who exercise their rights under the minimum wage law is prohibited. Those rights include:
    - filing a complaint regarding an employer's noncompliance;
    - informing any person about an employer's noncompliance; and
    - informing any person of his or her rights under s. 24, Article X of the State Constitution;
- That the employee must notify his or her employer of a violation and give the employer 15 days to resolve any claims for unpaid wages prior to filing a civil action to recover back wages;
- That an employee may file a civil action against an employer to recover back wages plus damages and attorney's fees;
- That an employer who intentionally violates the minimum wage requirements may be subject to a fine of $1,000 per violation, payable to the state;
- That the Attorney General or other official appointed by the Legislature may bring a civil action to enforce the minimum wage; and
- That further information may be obtained from s. 24, Article X of the State Constitution.

The bill also states that the required poster must be at least 8.5 inches in height by 11 inches in width. The letters of the poster must be conspicuous in size and the letters of the first line must be larger than the letters of any other line. In addition, the letters of the first sentence must be in bold type and larger than the letters in the remaining lines.

C. SECTION DIRECTORY:

Section 1: Creates s. 448.109, F.S., providing specific minimum wage posting requirements.
Section 2: Provides an effective date.

[3] Carrie Campbell, Commerce Committee staff, researched the existence of posting requirements in states having a wage higher than the federal rate.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Whether private businesses incur a cost in relation to this legislation depends on the method AWI chooses to disseminate this information to employers. Providing a free poster that may be downloaded would result in an indeterminable cost to employers who have internet access and the ability to print the posters.

D. FISCAL COMMENTS:

The bill requires AWI to "make available" a poster to employers to post in the workplace regarding the Florida Minimum Wage. AWI estimates that the cost of developing a document, as specified in the proposed legislation, and posting the document to the agency's website to be downloaded and printed by an employer who required to post the document, is approximately $120.00. Should AWI be required to design, print and mail posters to over 460,000 Florida employers, the agency has determined that cost to be a total of $235,600 including printing and postage.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Economic Development, Trade and Banking Committee adopted a strike-everything amendment to the bill on March 23, 2006. The amendment conforms the House bill to its Senate companion bill, making the following changes:

- It creates a new section of law, 448.109, which requires notice of the state minimum wage;
- It requires an employer to display a poster substantially similar to the 8.5 by 11 inch poster specified in the bill in every establishment were employees are employed;
- It removes a reference to filing of minimum wage complaints to the Agency for Workforce Innovation, which does not enforce or prosecute complaints relating to the minimum wage;
- It clarifies in the poster that an employee must meet the notice and 15 day resolution period before filing a civil action to recover back wages;
- It specifies a letter-sized poster to be used by employers; and
- It changes the effective date to January 1, 2007.

CHAMBER ACTION

The Economic Development, Trade & Banking Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to notification regarding the state minimum wage; creating s. 448.109, F.S.; providing definitions; requiring an employer to display posters at worksites to provide employees notice about the state minimum wage; requiring the Agency for Workforce Innovation to make available an updated poster each year; providing for the size and contents of the posters; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 448.109, Florida Statutes, is created to read:

448.109 Notification of the state minimum wage.--

(1) As used in this section, the terms:

(a) "Employer," "employee," and "wage" have the meanings as established under the federal Fair Labor Standards Act and its implementing regulations.

(b) "Florida minimum wage" means the wage that an employer must, at a minimum, pay an employee pursuant to s. 24, Art. X of the State Constitution and implementing law.

(2) Each employer who must pay an employee the Florida minimum wage shall prominently display a poster substantially similar to the one made available pursuant to subsection (3) in a conspicuous and accessible place in every establishment where such employees are employed.

(3)(a) Each year the Agency for Workforce Innovation shall, on or before December 1, create and make available to employers a poster in English and in Spanish which reads substantially as follows:

NOTICE TO EMPLOYEES

The Florida minimum wage is $ (amount) per hour and $ (amount) per hour for tipped workers for January 1, (year), through December 31, (year).

The rate of the minimum wage is recalculated yearly on September 30, based on the Consumer Price Index. Every year on January 1 the new Florida minimum wage takes effect.

An employer may not retaliate against an employee for exercising his or her right to receive the minimum wage. Rights protected by the State Constitution include the right to:

1. File a complaint about an employer's alleged noncompliance with lawful minimum-wage requirements.

2. Inform any person about an employer's alleged noncompliance with lawful minimum-wage requirements.

3. Inform any person of his or her potential rights under Section 24, Article X of the State Constitution and to assist him or her in asserting such rights.

An employee who has not received the lawful minimum wage after notifying his or her employer and giving the employer 15 days to resolve any claims for unpaid wages may bring a civil action in a court of law against an employer to recover back wages plus damages and attorney's fees.

An employer found liable for intentionally violating minimum-wage requirements is subject to a fine of $1,000 per violation, payable to the state.

The Attorney General or other official designated by the Legislature may bring a civil action to enforce the minimum wage.

For details see Section 24, Article X of the State Constitution.

(b) The poster must be at least 8.5 inches by 11 inches and in a format easily seen by employees. The text in the poster must be of a conspicuous size. The text in the first line must be larger than the text of any other line and the text of the first sentence must be in bold type and larger than the text in the remaining lines.

Section 2. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1211 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative Jennings offered the following:

Amendment

Remove lines 40 and 41 and insert:

The Florida minimum wage is $ (amount) per hour, with a minimum wage of at least $ (amount) per hour for tipped employees, in addition to tips, for January 1,

000000

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1395 CS Traffic Safety
SPONSOR(S): Sorensen
TIED BILLS: **IDEN./SIM. BILLS:** SB 224

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation Committee	12 Y, 2 N, w/CS	Thompson	Miller
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1395 w/CS the "Road Rage Reduction Act," expresses the Legislature's finding that "road rage and aggressive careless driving are a growing threat to the public's health, safety, and welfare."

The bill requires that on roads, streets, or highways with two or more lanes allowing for movement in the same direction, no person is to continue to operate a motor vehicle in the most left-hand lane once such person knows or should reasonably know he or she is being overtaken from the rear by a motor vehicle traveling at a higher rate of speed except when such motor vehicle is in the process of overtaking a slower vehicle in an adjacent lane or is preparing for a left turn.

The bill also increases the number of traffic violations from two to three that a person must commit simultaneously or in succession to be guilty of "aggressive careless driving" and includes failure to yield to overtaking vehicles as one of these traffic violations. A violation is a non-criminal traffic infraction punishable by a $60 fine plus applicable fees and court costs. The fees and court costs vary from county to county, but the total paid for each citation would range from $112.50 to $133.50, and an assessment of applicable points. In addition to the fines and accumulation of points, the bill provides that any person convicted of aggressive careless driving will be punished upon a first conviction, by fine of $100 and on a second or subsequent conviction, by a fine of not less than $250 or more than $500 and will be subject to a mandatory hearing.

The Department of Highway Safety and Motor Vehicles (DHSMV) is required to conduct a public awareness campaign to inform the motoring public about changes in the law, and to utilize, in cooperation with the Florida Highway Patrol, public service announcements.

HB 1395 w/CS prohibits behavior that is currently lawful. It is unknown how many traffic citations will be issued pursuant to the bill's provisions, therefore the resulting increase in revenue to the state and local governments cannot be determined.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill extends government regulation over the behavior of motorists by prohibiting currently lawful operation of motor vehicles in the left-hand lane of multi-lane roadways.

Safeguard individual liberty—The bill restricts the freedom of an individual to operate a motor vehicle in the left-hand lane of a multi-lane roadway under certain circumstances, which is allowed under current law.

B. EFFECT OF PROPOSED CHANGES:

Under current law, a motor vehicle proceeding upon any roadway at less than the normal speed of traffic under prevailing conditions must be driven in the right-hand lane. However, the requirement does not apply when the motor vehicle is overtaking or passing another vehicle proceeding in the same direction, or when preparing for a left turn.

On a two-way roadway having four or more lanes, no vehicle may be driven to the left of the centerline of the roadway, except when authorized by official traffic control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except to overtake or pass, or to prepare for a left turn.

Nothing in current law prohibits a person from operating a motor vehicle in the leftmost lane of multiple lanes traveling in the same direction, where the leftmost lane is not reserved for vehicles carrying multiple passengers.

Section 316.1923, F.S., defines "aggressive careless driving" as committing two or more of the following acts simultaneously or in succession:

- Exceeding the posted speed limit;
- Unsafely or improperly changing lanes;
- Following another vehicle too closely;
- Failing to yield the right-of-way;
- Improperly passing; or
- Violating traffic control and signal devices.

Current law, s. 318.14, F.S., relating to noncriminal traffic infractions, provides that a person who does not hold a commercial driver's license and who is issued a citation for speeding may elect to pay the fine without appearing before a hearing officer or judge and to attend a basic driver improvement course approved by DHSMV. In such a case, adjudication is withheld, points as provided by s. 322.27, F.S., are not assessed, and the civil penalty is reduced by 18 percent. A person is allowed to attend a driver improvement course in lieu of appearing before a hearing officer or judge once every twelve months, but not more than five times in total.

Section 318.19, F.S., provides that citations for the following infractions require a mandatory hearing:

- Any infraction which results in a crash and causes the death of another person;
- Any infraction which results in a crash that causes "serious bodily injury" of another person;
- Any infraction of failing to stop for a school bus; or
- Any infraction of failing to secure loads on vehicles.

HB 1395 w/CS provides legislative findings that road rage and aggressive careless driving are a growing threat to the public's health, safety, and welfare. The bill provides that road rage occurs when a driver or passenger intentionally injures or kills, or attempts or threatens to injure or kill, another motorist, passenger, or pedestrian. Aggressive careless driving is when a driver commits multiple traffic control violations simultaneously or in succession. The bill states that it is the intent of the Legislature to reduce road rage and aggressive careless driving, to reduce the incidence of drivers interfering with the movement of traffic, to minimize crashes, and to promote the safe, orderly, and free flow of traffic on the roads and highways of the state.

The bill requires that on roads, streets, or highways with two or more lanes allowing for movement in the same direction, no person is to continue to operate a motor vehicle in the most left-hand lane once the person knows or should reasonably know he or she is being overtaken from the rear by another motor vehicle traveling at a higher rate of speed. The bill provides exceptions to this requirement when the slower motor vehicle is in the process of overtaking another vehicle in an adjacent lane or is preparing to turn left.

The bill also amends s. 316.1923, F.S., increasing the number of traffic violations from two to three that a person must commit simultaneously or in succession to be guilty of "aggressive careless driving." The bill also includes failing to yield to overtaking vehicles as one of these traffic violations. A violation is a non-criminal traffic infraction punishable as a moving violation. Offenders would be subject to a $60 fine plus applicable fees and court costs for each violation. The fees and court costs vary from county to county, but the total paid for each citation would range from $112.50 to $133.50, and an assessment of applicable points against the driver's license for each of the acts violated.

Moving violations typically result in assessment of three points, unless the infraction or offense is among those considered more serious. For example, reckless driving, passing a stopped school bus, and speeding in excess of 15 mph over the posted limit all require assessment of four points. Leaving the scene of a crash and speeding resulting in a crash require assessment of six points. All other moving violations require assessment of three points. Section 322.27, F.S., sets out the points system for traffic violations.

In addition to the fines and accumulation of points, the bill provides that any person convicted of aggressive careless driving will be punished upon a first conviction, by fine of $100 and on a second or subsequent conviction, by a fine of not less than $250 or more than $500 and will be subject to a mandatory hearing. The bill also amends s. 318.19, F.S to require a mandatory hearing for a second or subsequent citation for aggressive careless driving.

The DHSMV is required to conduct a public awareness campaign to inform the motoring public about changes in the law, and to utilize, in cooperation with the Florida Highway Patrol, public service announcements. The scope of the campaign will be limited by DHSMV's existing resources for such campaigns and announcements.

C. SECTION DIRECTORY:

Section 1. Providing a popular name.

Section 2. Providing a statement of Legislative findings and intent.

Section 3. Amends s. 316.083, F.S., to require operators of motor vehicles to drive in the right-hand lane on certain roads, streets, or highways.

Section 4. Amends s. 316.1923, F.S., to revise aggressive careless driving provisions and to provide penalties for three or more violations of certain traffic violations.

Section 5. Amends s. 318.19, F.S., to requiring a mandatory hearing for a second or subsequent citation for aggressive careless driving.

Section 6. Provides for a public awareness campaign and public service announcements.

Section 6. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS section, below.

2. Expenditures:

   See FISCAL COMMENTS section, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS section, below.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A person violating the aggressive careless driving provision would be subject to a $60 fine plus applicable fees and court costs for each violation. The fees and court costs vary from county to county, but the total paid for each citation would range from $112.50 to $133.50, and an assessment of applicable points against the driver's license for each violation.

D. FISCAL COMMENTS:

HB 1395 w/CS prohibits behavior that is currently lawful. It is unknown how many traffic citations will be issued pursuant to the bill's provisions, therefore the resulting increase in revenue to the state and local governments is indeterminate.

To the extent that the bill deters unsafe traffic activity in Florida, crash-related injuries and deaths could be reduced thereby decreasing associated medical and insurance costs.

The bill directs the DHSMV to conduct a public awareness campaign (including public service announcements) regarding the changes in the law. Because the bill does not provide additional funding to the agency for the campaign, the scope of the public awareness campaign will be limited by what funds are available for such purposes within DHSMV's existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No exercise of rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On **March 21, 2006** the Committee on Transportation adopted a strike-all amendment to HB 1395. The amendment made the following changes:

- Provided the popular name the "Road Rage Reduction Act."
- Provided a statement of Legislative intent that road rage occurs when a driver or passenger intentionally injures or kills, or attempts or threatens to injure or kill, another motorist, passenger, or pedestrian and aggressive careless driving is when a driver commits multiple traffic control violations simultaneously or in succession.
- Amended s. 316.083, F.S., to provide that on roads, streets, or highways with two or more lanes allowing for movement in the same direction, no person is to continue to operate a motor vehicle in the most left-hand lane when being overtaken.
- Amended s. 316.1923, F.S., to revise aggressive careless driving provisions and to provide penalties for three or more violations of certain traffic violations.
- Amended s. 318.19, F.S., to require a mandatory hearing for a second or subsequent citation for aggressive careless driving.
- Provided that the DHSMV must conduct a public awareness campaign to the motoring public and provide public service announcements regarding changes to the law.
- Provided an effective date of July 1, 2006.

CHAMBER ACTION

The Transportation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to traffic safety; providing a short title; providing legislative findings and intent; amending s. 316.083, F.S.; prohibiting a person from operating a motor vehicle in the most left-hand lane under described circumstances; providing penalties for violations; amending s. 316.1923, F.S.; redefining the term "aggressive careless driving"; providing penalties for aggressive careless driving; amending s. 318.19, F.S.; requiring a hearing for a second or subsequent aggressive careless driving violation; requiring the Department of Highway Safety and Motor Vehicles to provide an educational awareness campaign; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Road Rage Reduction Act."

Section 2. The Legislature finds that road rage and aggressive careless driving are growing threats to the public's health, safety, and welfare. Road rage occurs when a driver or passenger intentionally injures or kills, or attempts or threatens to injure or kill, another motorist, passenger, or pedestrian. Aggressive careless driving occurs when a driver commits multiple traffic control violations simultaneously or in succession. The intent of the Legislature is to reduce road rage and aggressive careless driving, to reduce the incidence of drivers interfering with the movement of traffic, to minimize crashes, and to promote the safe, orderly, and free flow of traffic on the roads and highways of the state.

Section 3. Subsection (3) of section 316.083, Florida Statutes, is renumbered as subsection (4), and a new subsection (3) is added to that section, to read:

316.083 Overtaking and passing a vehicle.--The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

(3) On roads, streets, or highways with two or more lanes allowing for movement in the same direction, no person shall continue to operate a motor vehicle in the most left-hand lane once such person knows or reasonably should know he or she is being overtaken in such lane from the rear by a motor vehicle traveling at a higher rate of speed except when such motor vehicle is in the process of overtaking a slower vehicle in an adjacent lane or is preparing for a left turn.

(4)~~(3)~~ A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

Section 4. Section 316.1923, Florida Statutes, is amended to read:

316.1923 Aggressive careless driving.--

(1) "Aggressive careless driving" means committing three ~~two~~ or more of the following acts simultaneously or in succession:

(a)~~(1)~~ Exceeding the posted speed as defined in s. 322.27(3)(d)5.b.

(b)~~(2)~~ Unsafely or improperly changing lanes as defined in s. 316.085.

(c)~~(3)~~ Following another vehicle too closely as defined in s. 316.0895(1).

(d)~~(4)~~ Failing to yield the right-of-way as defined in s. 316.079, s. 316.0815, or s. 316.123.

(e)~~(5)~~ Improperly passing or failing to yield to overtaking vehicles as defined in s. 316.083, s. 316.084, or s. 316.085.

(f)~~(6)~~ Violating traffic control and signal devices as defined in ss. 316.074 and 316.075.

(2) Any person convicted of aggressive careless driving shall be guilty of a moving violation and shall be punished as provided in chapter 318, including the accumulation of points as provided in s. 322.27, for each of the acts committed.

(3) In addition to the fines and accumulation of points under subsection (2) for each of the acts committed, a person convicted of aggressive careless driving shall be punished:

(a) Upon a first conviction, by fine of $100.

(b) Upon a second or subsequent conviction, by a fine of not less than $250 or more than $500.

(4) A second or subsequent citation for aggressive careless driving is subject to a mandatory hearing under s. 318.19.

Section 5. Subsections (3), (4), and (5) of section 318.19, Florida Statutes, are amended to read:

318.19 Infractions requiring a mandatory hearing.--Any person cited for the infractions listed in this section shall not have the provisions of s. 318.14(2), (4), and (9) available to him or her but must appear before the designated official at the time and location of the scheduled hearing:

(3) Any infraction of s. 316.172(1)(b); ~~or~~

(4) Any infraction of s. 316.520(1) or (2); or

(5) Any second or subsequent infraction of s. 316.1923(1).

Section 6. The Department of Highway Safety and Motor Vehicles shall provide an educational awareness campaign informing the motoring public about the Road Rage Reduction Act. The department shall provide information about the Road Rage Reduction Act in all newly printed driver's license educational materials after October 1, 2006, and in public service announcements produced in cooperation with the Florida Highway Patrol.

Section 7. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1395 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative Jennings offered the following:

Amendment (with title amendment)

Between lines 53 and 54 insert:

Section 4. Section 316.172, Florida Statutes, is amended to read:

316.172 Traffic to stop for school bus; school bus stop zones.--

(1)(a) Any person using, operating, or driving a vehicle on or over the roads or highways of this state shall, upon approaching any school bus which displays a stop signal, bring such vehicle to a full stop while the bus is stopped, and the vehicle shall not pass the school bus until the signal has been withdrawn. A person who violates this section commits a moving violation, punishable as provided in chapter 318.

(b) Any person using, operating, or driving a vehicle that passes a school bus on the side that children enter and exit when the school bus displays a stop signal commits a moving

violation, punishable as provided in chapter 318, and is subject to a mandatory hearing under the provisions of s. 318.19.

(2) The driver of a vehicle upon a divided highway with an unpaved space of at least 5 feet, a raised median, or a physical barrier is not required to stop when traveling in the opposite direction of a school bus which is stopped in accordance with the provisions of this section.

(3) When a school bus is stopped with warning lights displayed and discharging or loading passengers, the area of roadway within 800 feet in front of the bus and 800 feet behind the bus shall be considered a school bus stop zone.

(4) ~~(3)~~ Every school bus shall stop as far to the right of the street as possible and shall display warning lights and stop signals as required by rules of the State Board of Education before discharging or loading passengers. When possible, a school bus shall not stop where the visibility is obscured for a distance of 200 feet either way from the bus.

Section 5. Paragraph (c) of subsection (3) of section 318.18, Florida Statutes is amended to read:

318.18 Amount of civil penalties. - The penalties required for a noncriminal disposition pursuant to s.318.14 are as follows:

(3)

(c) Notwithstanding paragraph (b), a person cited for exceeding the speed limit by up to 5 m.p.h. in a legally posted school zone or school bus stop zone will be fined $50. A person exceeding the speed limit in a school zone or school bus stop zone shall pay a fine double the amount listed in paragraph (b).

Amendment No. (for drafter's use only)

52
53
54 ========== T I T L E A M E N D M E N T ==========
55 Remove line 11 and insert:
56 amending s. 316.172, F.S.; defining a school bus stop zone;
57 amending s. 318.18, F.S.; providing increased penalties for
58 speeding in a school bus stop zone; amending s. 316.1923, F.S.;
59 redefining the term

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1537 CS Legal Actions
SPONSOR(S): Llorente
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2298

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	4 Y, 0 N, w/CS	Blalock	Bond
2) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

No court may preside over a case unless the court has jurisdiction over the persons and the subject matter involved. A court bases personal jurisdiction on the acts of the party involved. This bill increases the types of acts that will subject a person to the jurisdiction of Florida courts by providing that under certain circumstances a court will have personal jurisdiction of a person who enters into a contract with a choice of law agreement.

This bill expands the scope of a "foreign judgment" to include judgments of any court that is entitled to full faith and credit in Florida.

This bill expands the types of contracts that can have Florida choice of law agreements in the contracts.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases the types of acts which will subject a person to the jurisdiction of Florida courts, and increases the types of contracts which can have choice of law agreements in Florida.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 48.193(1), F.S., provides that state courts have personal jurisdiction over any person, whether or not a citizen or resident of the state, who personally or through an agent does any of the following acts:

- Operating, conducting, engaging in, or carrying on a business in this state, or having an office or agency in this state;
- Committing a tort within the state;
- Owning, using, possessing, or holding a mortgage or other lien on any real property within this state;
- Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state;
- Contracting to insure any person, property, or risk located within this state at the time of contracting; or
- Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if:
    - The defendant was engaged in solicitation or service activities within this state; or
    - Products, materials, or things processed, serviced, or manufactured by the defendant were used or consumed within this state in the ordinary course of commerce, trade, or use.

Sections 685.101 and 685.102, F.S., also pertain to the jurisdiction of Florida courts. Section 685.101, F.S., provides that any party to a contract involving at least $250,000 can agree that the law of Florida will govern whether or not the contract bears any relation to the state. This provision does not apply to any contract:

- Regarding any transaction that does not bear a substantial or reasonable relation to the state of Florida in which every party is either a resident or citizen of the United States, but not this state, or incorporated or organized under the laws of another state and does not maintain a place of business in Florida.
- For labor or employment.
- Relates to any transaction for personal, family, or household purpose, unless the contract concerns a trust where at least one trustee resides or transacts business as a trustee in this state.

Section 685.102, F.S., provides that any person can file in the state of Florida any action or proceeding against a person or entity residing or located outside this state, if the action or proceeding arises out of or relates to any contract for which a choice of the law of agreement in Florida has been made pursuant to the provisions described above in s. 685.101, F.S.

Section 55.502, F.S., provides for the definition of a "foreign judgment" under the "Florida Enforcement of Foreign Judgments Act". The general purpose of the Florida Enforcement of Foreign Judgments Act is to make uniform the law with respect to enforcing foreign judgments among the states enacting it. The Act provides the method by which foreign judgments, entitled to full faith and credit under constitutional standards, may become Florida judgments for enforcement purposes. Subject to the judgment debtor's right to file an action within a specified time challenging the validity of the foreign judgment, the Act permits the enforcement of the foreign judgment without the filing of a separate action. A "foreign judgment" is any judgment, decree, or order of a court of any other state or of the United States if such judgment, decree, or order is entitled to full faith and credit in this state.

Effect of Bill

This bill amends s. 48.193(1), F.S., to provide that entering into a contract where there is a choice of Florida law agreement, pursuant to s. 685.101, F.S., will subject a person to the jurisdiction of Florida courts, whether or not they are a citizen or resident of Florida.

This bill amends s. 685.101(2), F.S. to expand the types of contracts that can have choice of law agreements. This bill removes the provision that this section does not apply to "any contract regarding any transaction that does not bear a substantial or reasonable relation to the state of Florida in which every party is either a resident or citizen of the United States, but not this state, or incorporated or organized under the laws of another state and does not maintain a place of business in Florida". Therefore, parties that are not citizens or residents of Florida and whose contract is not substantially or reasonably related to Florida would be able to agree that the law of Florida will govern the contract.

This bill also amends s. 685.101(2), F.S., to remove the provision that choice of law agreements pursuant to s. 685.101, F.S., will not apply to contracts relating to any transaction for personal, family, or household purpose, "unless the contract concerns a trust where at least one trustee resides or transacts business as a trustee in this state". Therefore, it appears that a contract or agreement that concerns a trust where at least one trustee resides or transacts business as a trustee in Florida will not be allowed to have a Florida choice of law agreement.

This bill also amends ss. 685.101(4) and 685.102(3) F.S., to provide that this section applies to contracts entered into on or before June 30, 2006. This bill removes language in both sections providing that the two sections apply to "contracts entered into prior to June 27 1989, if an action or proceeding relating to the contract is commenced on or after June 27, 1989".

This bill amends s. 55.502, F.S., to revise the definition of a "foreign judgment". This bill provides that a foreign judgment is any judgment, decree, or order of a court of the United States or any other court that is entitled to full faith and credit in this state. The change in the definition that a foreign judgment consists of an judgment of the United States or "any other court" which is entitled to full faith and credit in this state allows judgments from courts in U.S. territories and other places under U.S. jurisdiction that are not states. Current law provides that a foreign judgment only pertains to courts of "any other state, or of the United States".

C. SECTION DIRECTORY:

Section 1 amends s. 48.193, F.S., to provide that entering into a contract that meets certain requirements will subject a person to the jurisdiction of Florida courts.

Section 2 amends s. 55.502, F.S., to revise the definition of "foreign judgment".

Section 3 amends s. 685.101, F.S., to revise the types of contracts where a choice of law agreement in Florida is permitted.

Section 4 amends s. 685.102, F.S., to revise the timeframe that contracts must be entered to apply to the provisions of the section.

Section 5 provides an effective date of June 30, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Civil Justice Committee adopted one amendment to this bill. The amendment removed section one of the bill, which allowed the Secretary of State to be served process on behalf of a domestic corporation or a registered foreign corporation. The bill was then reported favorably with a committee substitute.

CHAMBER ACTION

The Civil Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to legal actions; amending s. 48.193, F.S.; specifying an additional act subjecting a person to state court jurisdiction; amending s. 55.502, F.S.; revising construction of the term "foreign judgment" under the Florida Enforcement of Foreign Judgments Act; amending ss. 685.101 and 685.102, F.S.; revising application of choice of law and jurisdiction provisions to certain contracts, agreements, or undertakings; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (i) is added to subsection (1) of section 48.193, Florida Statutes, to read:

48.193 Acts subjecting person to jurisdiction of courts of state.--

(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the

acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:

(i) Entering into a contract that complies with s. 685.102.

Section 2. Subsection (1) of section 55.502, Florida Statutes, is amended to read:

55.502 Construction of act.--

(1) As used in ss. 55.501-55.509, the term "foreign judgment" means any judgment, decree, or order of a court ~~of any other state or~~ of the United States or any other court which ~~if such judgment, decree, or order~~ is entitled to full faith and credit in this state.

Section 3. Section 685.101, Florida Statutes, is amended to read:

685.101 Choice of law.--

(1) The parties to any contract, agreement, or undertaking, contingent or otherwise, in consideration of or relating to any obligation arising out of a transaction involving in the aggregate not less than $250,000, the equivalent thereof in any foreign currency, or services or tangible or intangible property, or both, of equivalent value, including a transaction otherwise covered by s. 671.105(1), may, to the extent permitted under the United States Constitution, agree that the law of this state will govern such contract, agreement, or undertaking, the effect thereof and their rights

and duties thereunder, in whole or in part, whether or not such contract, agreement, or undertaking bears any relation to this state.

(2) This section does not apply to any contract, agreement, or undertaking:

~~(a) Regarding any transaction which does not bear a substantial or reasonable relation to this state in which every party is either or a combination of:~~

~~1. A resident and citizen of the United States, but not of this state; or~~

~~2. Incorporated or organized under the laws of another state and does not maintain a place of business in this state;~~

(a) ~~(b)~~ For labor or employment;

(b) ~~(c)~~ Relating to any transaction for personal, family, or household purposes~~, unless such contract, agreement, or undertaking concerns a trust at least one trustee of which resides or transacts business as a trustee in this state, in which case this section applies~~;

(c) ~~(d)~~ To the extent provided to the contrary in s. 671.105(2); or

(d) ~~(e)~~ To the extent such contract, agreement, or undertaking is otherwise covered or affected by s. 655.55.

(3) This section does not limit or deny the enforcement of any provision respecting choice of law in any other contract, agreement, or undertaking.

(4) This section applies to~~:~~

~~(a)~~ contracts entered into on or after June 30, 2006 ~~27, 1989; and~~

~~(b) Contracts entered into prior to June 27, 1989, if an action or proceeding relating to such contract is commenced on or after June 27, 1989~~.

Section 4. Section 685.102, Florida Statutes, is amended to read:

685.102 Jurisdiction.--

(1) Notwithstanding any law that limits the right of a person to maintain an action or proceeding, any person may, to the extent permitted under the United States Constitution, maintain in this state an action or proceeding against any person or other entity residing or located outside this state, if the action or proceeding arises out of or relates to any contract, agreement, or undertaking for which a choice of the law of this state, in whole or in part, has been made consistent with ~~pursuant to~~ s. 685.101 and which contains a provision by which such person or other entity residing or located outside this state agrees to submit to the jurisdiction of the courts of this state.

(2) This section does not affect the jurisdiction of the courts of this state over any action or proceeding arising out of or relating to any other contract, agreement, or undertaking.

(3) This section applies to~~:~~

~~(a)~~ contracts entered into on or after June 30, 2006 ~~27, 1989; and~~

~~(b) Contracts entered into prior to June 27, 1989, if an action or proceeding relating to such contract is commenced on or after June 27, 1989~~.

Section 5. This act shall take effect June 30, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7077 PCB TR 06-04 Transportation
SPONSOR(S): Transportation Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Transportation Committee	14 Y, 1 N	Pugh	Miller
1) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
2) State Infrastructure Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 7077 (formerly PCB TR 06-04) is an omnibus bill that addresses a variety of transportation financing, planning, and administrative issues. Among its key provisions, the proposed legislation:

- Raises the Turnpike Enterprise's revenue bond cap from $4.5 billion in bonds issued to $6 billion in bonds outstanding. This change not only gives the Turnpike Enterprise more immediate bond capacity, but creates a line of credit, so to speak, to issue more bonds as the Turnpike pays down its balance.
- Makes numerous administrative, organizational and technical changes to the metropolitan planning organizations.
- Stiffens penalties for motorists who speed through toll plazas without paying tolls and those who purposely obscure their vehicles' license plates.
- Creates the Osceola County Expressway Authority.
- Creates environmental permitting exemptions for certain small-scale transportation projects with minimal adverse impacts.
- Modifies the membership of the Miami-Dade County Expressway Authority and imposes new noticing requirements before the authority can set new toll rates.
- Directs the Florida Department of Transportation to study the impacts that slot-machine gambling at pari-mutuel facilities and Indian reservations may have on nearby access roads and other transportation facilities, with the report due to the Governor and the Legislature by January 15, 2007.
- Modifies the Charter County Transit System Surtax to include all counties; allows the surtax to be levied upon a supermajority vote of the county commission; broadens the surtax's uses; and provides a formula for counties to share the surtax proceeds with municipalities.
- Allows the Orlando-Orange County Expressway Authority to set a performance bond waiver cap of $500,000 for public projects, up from the $200,000 contract cap currently in law, to promote its small-business contractor program.
- Appropriates $400 million in recurring general revenue, beginning in fiscal year 2006-2007, to FDOT for use in its Other Arterial Highway projects. The appropriation also will be indexed to the Consumer Price Index.

HB 7077 does not raise any apparent constitutional or legal issues. It has a minimum fiscal impact of $400 million in general revenue annually. The legislation would take effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: Several provisions in HB 7077 implicate this principle, in varying ways. Section 19 creates the Osceola County Expressway Authority, which has the power to issue revenue bonds and to impose tolls. Sections 21 and 24-26 reduce environmental regulatory hurdles for certain transportation projects. Sections 27 and 28, respectively, reduce the membership of the Miami-Dade County Expressway Authority (MDX) and impose new noticing requirements prior to the MDX raising tolls.

B. EFFECT OF PROPOSED CHANGES:

Florida Turnpike Bond Cap

Current Situation

A part of the Florida Department of Transportation (FDOT), the Florida Turnpike Enterprise is a 450-mile system of limited-access toll highways. The turnpike's 2006-2010 Work Program is funded largely through revenue bonds, backed by toll revenues. According to FDOT staff, every $1 in recurring toll revenues from the Turnpike can be leveraged to generate $14 to pay for project costs.

Section 338.227, F.S., authorizes FDOT to issue bonds to pay all or a part of legislatively approved turnpike projects, and section 338.2275, F.S., limits the total amount of bonds that may be issued to $4.5 billion. According to FDOT, nearly $2.336 billion in Turnpike bonds have been issued over the years, leaving $2.164 billion within the statutory cap to be authorized. However, the Turnpike's long-range project plan through FY 2010-2011 indicates that the estimated costs of the projects exceed the statutory bond cap by approximately $950 million.

Section 339.135(3), F.S., requires FDOT to base its Five-Year Work Program on a "complete, balanced financial plan." To comply with the law, the Turnpike will have to either eliminate or scale back proposed projects, adopt a "pay-as-you go" approach to financing future projects, or seek a change in law to raise the bond cap.

Current Turnpike projects include completion of the Western Beltway, Part C; adding 150 lane miles through widening of the Turnpike System at a cost of nearly $1 billion; adding four new interchanges and improving three other interchanges at a cost of $200 million to improve access to the Turnpike System; and converting the Sawgrass Expressway to a fully electronic, open-road tolling facility and adding SunPass Express lanes at other locations.

Projects proposed for the Turnpike's 2007-2011 Work Program – if the bond cap is increased – include nearly $370 million for additional lanes on various sections of the Homestead Extension-Florida Turnpike (HEFT) and $467 million for additional lanes along the Turnpike Mainline and the Veterans Expressway.

Potential future projects under review by Turnpike staff include another phase of the Suncoast Parkway; extensions of the Polk Parkway, State Road 417 in Volusia County, and the Sawgrass Expressway in Broward County to link with I-95; express lanes on the HEFT and the interstates; and the Port of Miami tunnel.

Effect of Program Changes

FDOT proposes raising the cap on Turnpike bonds from $4.5 billion to $6 billion, and changing the limitation to a maximum amount outstanding, thereby providing for a "line of credit" that the Turnpike can utilize for long-term planning.

According to FDOT staff, this cap increase will allow the Turnpike to complete currently planned projects and to continue an aggressive approach to building tolled facilities to handle future transportation needs.

Any increase in the bond cap will not impact the state of Florida's debt affordability index, because Turnpike bonds are revenue bonds, backed by toll collections, and do not pledge the full faith and credit of the state.

Florida Turnpike/Expressway Authority Traffic Enforcement Issues

Current Situation

Section 316.1001, F.S., specifies that persons who use a toll facility without paying a toll (unless otherwise exempted) are guilty of a noncriminal traffic infraction, punishable as a moving violation. Pursuant to chapter 318, F.S., if the citation is not paid in a timely fashion, then the matter is forwarded to the courts. Violators are subject to points being assessed on their driver's licenses.

Florida's uniform traffic code and motor vehicle registration laws also include requirements for proper placement and appearance of vehicle license plates, to make it easier for law enforcement officers to quickly identify tag numbers of vehicles involved in criminal activity.

The Florida Turnpike and the expressway authorities are reporting an upswing in the numbers of motorists – particularly repeat offenders -- speeding through toll plazas without paying tolls or without transponders. The Turnpike and the Tampa-Hillsborough County Expressway Authority reported at least $16 million in lost toll revenues in FY 2004-2005, while the Orlando-Orange County Expressway Authority (OOCEA) reported a $6 million loss.

These agencies also reported spending more money last fiscal year to contact and litigate toll-plaza violators than they collected. The Turnpike reported spending more than $2.5 million to collect $721,362 in unpaid toll collections, while the OOCEA spent $1.41 million to collect about $412,000.

While most of the toll plazas are equipped with cameras that photograph the license plates of motorists who speed through without paying tolls, more often these photographs are of little use to enforcement personnel because the plates are purposely obscured or mutilated, or are displayed upside down or out of the cameras' view range. The expressway authorities have learned of websites and retailers selling sprays and other materials that when applied to license tags obscure them just enough to prevent clear photographs by the toll cameras.

In December 2005, the Florida Transportation Commission passed a resolution supporting tougher penalties and fines for motorists who fail to pay tolls or obscure their license plates.

Effect of Proposed Changes

HB 7077 makes a number of changes to the traffic violation statutes to stiffen penalties and fines for toll-plaza violators and to address loopholes in the current law. For example:

- The bill amends ss. 316.650(3) and 318.14(12), F.S., to clarify that violators must pay the amount of the unpaid toll and a fine imposed by the expressway authority to the governmental entity that issued the citation within 30 days in order to avoid a court hearing and points assessed against their licenses. A motorist who fails to do this has an additional 45 days to request a court hearing or pay the civil penalty and other charges.
- The bill also amends s. 318.18(7), F.S., to specify that a violator found guilty by a judge must pay a $150 fine plus the amount of the unpaid toll to the court, which will forward $50 and the amount of the unpaid toll to the appropriate expressway authority. The remaining $100 would be distributed to the General Revenue Fund, local governments, and various trust funds, as provided in s. 318.21, F.S.
- Where adjudication is withheld or the violator pleads out before the case goes to court, the fine is $100, plus the amount of the unpaid toll. The court will forward $50 and the

amount of the unpaid toll to the appropriate expressway authority, with the remaining $50 distributed as provided in s. 318.21, F.S.
- The driver's license of any person who receives 10 convictions of s. 316.1001, F.S., within a 36-month period must be suspended for 60 days.

The bill also amends s. 320.061, F.S., to make it illegal to obscure license plates with any substance or coating that restricts their visibility or prevents a legible electronic image recording from being made. Under the legislation, the registration of plates so obscured would be revoked. Also, the Florida Attorney General may file suit against any individual or entity selling or marketing products advertised as being able to obscure license plates. These lawsuits may seek injunctive and monetary relief, punitive damages, and attorney's fees. Any lawsuit also must seek records of all sales of the product to Floridians or other entities within Florida.

Finally, the bill clarifies placement of license plates. Section 316.605(1), F.S., would be amended to specify that:

- License plates must be secured to the main body of a vehicle no higher than 60 inches and no lower than 12 inches from the ground, and
- License plates must be affixed to a vehicle so that its letters and numerals shall be read from left to right, parallel to the ground. This means that license plates can't be attached upside down, vertically, or in reverse position.

Osceola Expressway Authority

Current Situation

Nine expressway authorities have been created in chapter 348, F.S., by the Florida Legislature. A tenth, the Miami-Dade County Expressway Authority, was created by the Miami-Dade County Commission pursuant to the process in Part I of Chapter 348, F.S. Their purpose is to construct, maintain, and operate tolled transportation facilities that complement the State Highway System and the Florida Turnpike Enterprise. Bonds issued for expressway projects must comply with state constitutional requirements. The expressway authorities have boards of directors that typically include a combination of local-government officials or residents and Governor appointees who decide on projects and expenditure of funds.

There also are four regional transportation authorities created in chapter 343, F.S., and one local transportation authority, the Jacksonville Transportation Authority, created in chapter 349, F.S.

Osceola County is in one of the fastest-growing regions of the state, and local officials and developers have expressed interest the last two years in partnering to improve transportation infrastructure there. Supporters of creating the expressway authority have mentioned a 6.5-mile-long toll road in the western part of the county as one project. This toll road would link Marigold Avenue in the Poinciana community in Osceola with U.S. 17 and County Road 54 in Polk County.

Effect of Proposed Changes

HB 7077 proposes creating the "Osceola County Expressway Authority," modeled in many respects to existing authorities with standard "boiler-plate" language about the process to issue bonds, protection of bondholders, and relationships with FDOT.

Pursuant to the legislation:

- The expressway authority would have a six-member governing board, of which five would be voting members. The board's voting members would be comprised of three residents of Osceola County appointed by the Osceola County Commission and two Osceola County residents appointed by the Governor. The FDOT District 5 Secretary would serve as an ex-officio, non-voting member. No Authority member may be an officer or employee of Osceola County.

- The members shall serve 4-year terms, except that the Governor's initial appointees shall serve 2-year terms.
- The board members would serve without compensation, but be eligible to receive per diem and other travel expenses pursuant to 112.061, F.S.
- The board can hire an executive director and other staff.
- The Authority can issue revenue bonds, either on its own or through the state Division of Bond Finance. In both cases, the bonds and the issuance process must conform to State Bond Act requirements. These bonds' term may not exceed 40 years, and can not pledge the full faith and credit of the state of Florida.
- If approved by the Osceola County Commission, the Authority may pledge a portion of county gasoline tax revenues to repay the revenue bonds. The Authority must reimburse the county for any gas tax revenues it spends.
- The Authority is allowed to set and collect tolls, fees, and other charges; acquire land by purchase, donation, or eminent domain; borrow money; to sue and be sued; and enter into contracts, agreements, and partnerships with public and private entities.
- The Authority may construct, operate, and maintain roads, bridges, and other transportation facilities outside of Osceola County with the consent of the county within whose jurisdiction these projects are located.
- Likewise, the Authority may not acquire right-of-way for a project within unincorporated Osceola County until the County Commission has approved the project's route.
- The Authority may enter into lease-purchase agreements with FDOT to manage the system. FDOT also may be appointed by the Authority as its agent to oversee construction of the system's components.
- FDOT is authorized to spend up to $375,000 of its funding for the Authority's operating costs, and to conduct traffic surveys, preliminary engineering studies, and similar initial activities for the expressway system.

Other Turnpike/Expressway Issues

HB 7077 proposes a number of changes to the sections of law related to the Miami-Dade County Expressway Authority (MDX); the Orlando-Orange County Expressway Authority (OOCEA); the expanded use of transponders; and the Florida Turnpike budget. HB 7077 makes the following changes:

MDX:

- Currently, an expressway authority in a county defined in s. 125.11(1), F.S., (which applies only to MDX) can have up to 13 voting members: seven appointed by the County Commission; five appointed by the Governor; and the final member being the FDOT District 6 secretary. MDX has powers similar to those of all the other expressway authorities created in law, including the power to levy tolls on its transportation facilities.

  HB 7077 would reduce the authority board to a maximum of seven voting members, with the chair of the Miami-Dade legislative delegation, or designee, and the FDOT District 6 secretary as non-voting members The new voting membership would be comprised of: two Miami-Dade county commissioners appointed by the commission chair; one member may be a mayor of a municipality within the county and appointed by the Miami-Dade County League of Cities; and four Governor appointees.

  The legislation also would require MDX, prior to raising tolls, to publish a notice of intent in a newspaper of general circulation, as defined in s. 97.021(16), F.S., specifying the amount of the increase. The notice must be published twice, at least seven days apart, with the first notice published no more than 90 days from the effective date of the toll increase and the second publication not less than 60 days prior to the effective date. These provisions do not apply to toll increases approved by the authority prior to this legislation becoming law.

OOCEA

- Currently, OOCEA has a program that seeks to encourage Orlando-area small-business owners to bid on components of expressway authority projects. In its eight years' of existence, the so-called "micro-contract" program has attracted more than 100 small companies to perform such tasks as erecting guard rails, installing landscaping, and striping toll roads. One of the benefits of the program to small businesses has been the waiver of a performance bond for project contracts of $200,000 or less. This waiver is available to all state agencies, pursuant to s. 255.05, F.S. Persons or entities awarded public contracts greater than $200,000 must post a surety bond to guarantee the work will be performed to the state agency's specifications.

  The recent unprecedented increases in transportation construction materials and labor in Florida has increased the bids for these micro-contracts, according to OOCEA staff. As a way to save the popular program, the OOCEA is proposing amending s. 348.754, F.S., which specifies the OOCEA's purposes and powers, to raise to a maximum $500,000 the contract threshold for a performance-bond waiver for OOCEA contractors only.

  The proposal also limits participation in the program to independent businesses principally headquartered in the Orange County Standard Metropolitan Statistical Area and employing a maximum of 25 persons. Eligible businesses also must have gross annual construction sales averaging $3 million or less over the previous three calendar years; be accepted into OOCEA's economic-development program; and participate in OOCEA technical assistance or other educational programs. Any small business which has been the successful bidder on six micro-contracts is ineligible to continue participating in the program.

Toll Transponders

- Section 338.161, F.S., allows FDOT and the Turnpike to spend funds for marketing its Sun Pass transponders, and to receive funds from advertising placed on its transponders and promotional materials to defray costs. Expressway authorities, which also sell transponders to their customers, do not have similar statutory authority.

  Current law does not address potential uses of transponders other than for toll collection, although the Turnpike and the OOCEA have been allowing their customers to pay for parking at the Orlando International Airport from their transponder accounts. According to the OOCEA, about 28 percent of all airport parking lot users there pay with a SunPass or E-Pass transponder.

  HB 7077 amends s. 338.161, F.S., to extend to expressway authorities the ability to market their transponders. It also would specifically allow expressway authorities and FDOT and the Turnpike to enter into agreements with private or public entities to expand the uses of their transponders. Attorneys for the Turnpike and expressway authorities have said such express statutory permission is necessary so that future contracts to expand the use of transponder accounts are on firm legal ground.

Turnpike Budget

- In 2005 the Legislature revised several technical provisions in statute related to state budget requirements and deadlines. One of these revisions changed the roll-forward date of certified undisbursed funds in FDOT's accounts from December 31 of each year to September 30 of each year. Advancing the roll-forward date gives FDOT budget staff more information about these funds as they are preparing the agency's Legislature Budget Request in the fall. However, the Turnpike's budget process is in a different section of law than is FDOT's, and was overlooked last year.

  HB 7077 amends s. 338.2216, F.S., to correct the oversight and conform the Turnpike's roll-forward budget date to FDOT's budget process.

Public-private partnerships

- Currently, s. 348.0004(9), F.S., in Part I of the chapter, allows any expressway authority to solicit proposals from private companies wishing to enter into partnership agreements for the purpose of building, financing, operating, or owning toll facilities. No such partnership has been consummated, although the Tampa-Hillsborough Expressway Authority has advertised for proposals from private entities to help finance, design, and build a 3-mile-long, four-lane tolled highway linking Tampa Palms with I-275. The deadline for submitting proposals is May 8, 2006.

  The authority's attorneys have questioned whether the existing law is clear that any expressway authority, and not just those created pursuant to Part I of chapter 348, F.S., can participate in the public-private partnerships. To address those concerns, HB 7077 amends s. 348.0004(9), F.S., to say that "notwithstanding any law to the contrary, any expressway authority, transportation authority, bridge authority, or toll authority established either by statute or pursuant to Part I, chapter 348, F.S.," may enter into these partnerships.

M.P.O. Issues

Current Situation

As established by 23 U.S.C. s. 134 , Metropolitan Planning Organizations (M.P.O.'s) are directed to develop, in cooperation with state officials, transportation plans and programs for urbanized areas of more than 50,000 persons. The process for developing such plans and programs must provide for the consideration of all modes of transportation and "shall be continuing, cooperative, and comprehensive" to the degree appropriate based on the complexity of the transportation problems. The plans also must emphasize projects that serve an important national, state or regional transportation purpose.

Pursuant to s. 339.175, F.S., M.P.O.'s in cooperation with the state and public transit operators develop multi-year "transportation improvement plans," or TIPs, that are the building blocks for FDOT's statewide Five-Year Work Program. Besides the TIPs, the M.P.O.'s also develop long-range transportation plans ranging over 20 years and an annual "unified planning work program" that lists all the planning tasks each M.P.O. will undertake that fiscal year.

An M.P.O. must be designated for each urbanized area of the state. Such designation must be accomplished by agreement between the Governor and units of general-purpose local government representing at least 75 percent of the population of the urbanized area. Each M.P.O. must be created and operated pursuant to an interlocal agreement entered into pursuant to s. 163.01, F.S. Currently, Florida has 26 M.P.O.'s. These boards consist of local elected officials and appropriate state agencies, and may also include officials of public agencies that administer major modes of transportation within the metropolitan area.

In recent years, as the Legislature has instituted transportation policy directives focusing on regional planning and transportation infrastructure improvements, the section of law governing M.P.O.'s responsibilities in Florida has been criticized as internally inconsistent and unclear as to the entities' precise responsibilities and their degree of independence.

Effect of Proposed Changes

HB 7077 amends s. 339.175, F.S., and other sections of law to bring clarity and uniformity to M.P.O.'s administrative structure, powers and duties, and general responsibilities. For example, one criticism has been that some M.P.O.'s cannot fully embrace regional planning approaches because they, or their staffs, are not as independent as they should be from county and city governments.

The bill amends chapters 112 and 121, F.S., to clarify that M.P.O.'s are separate legal entities independent from the local governing body; allow M.P.O. staff to participate in the Florida Retirement System; designate each M.P.O.'s executive director or staff director as a member of the Senior Management Service class; and allow M.P.O.'s to establish per diem and travel reimbursement rates.

It also amends s. 339.175(5), F.S., to clarify that an M.P.O.'s executive director reports directly to his or her M.P.O. Governing Board, and that the executive director and staff are employed by the M.P.O.,or through a staff services agreement between the MPO and another governmental entity. In addition, the legislation makes it clear that M.P.O. staff work for the M.P.O., and not for any of the member cities or counties.

HB 7077 also amends s. 339.175(1) and (2), F.S., to address a number of membership issues. The bill:

- Directs each M.P.O. to select a chair, vice chair, and clerk;
- Specifies the officers' responsibilities;
- Requires each M.P.O. to provide training on the urbanized transportation planning process to all who serve as members;
- Clarifies that voting members shall exclude constitutional or charter officers;
- Establishes a process by which alternate members are selected;
- Directs M.P.O.'s to appoint nonvoting representatives of various multi-modal organizations, who are not otherwise represented by voting members; and
- Directs M.P.O's to appoint representatives of major military installations as non-voting advisors if requested by the bases.

Additionally, the bill gives, or at least clarifies, M.P.O. powers common to many other types of independent boards with budgets, such as the authority to: sell, donate, dedicate, or convey property; appropriate funds; receive grants-in-aid; enjoy sovereign immunity; incur debt; hire staff, including legal counsel; acquire buildings; and have all powers provided for under federal law.

Current law requires roll-call votes of all members present in order to adopt or update certain plans. HB 7077 amends s. 339.175(12), F.S., to provide for a supermajority roll-call vote, or a hand-counted vote of a majority-plus-one, of the membership present to adopt transportation plan amendments affecting projects in the first three years of such plans. This change is related to the provision in s. 339.135(4)(b)3., F.S., that the first three years of FDOT's adopted work program is the state's commitment to undertake transportation projects that local governments may rely on for planning and concurrency purposes.

Finally, HB 7077 amends s. 339.175(5), F.S., to specify that contiguous M.P.O.'s must develop a report on regional planning actions and accomplishments. The report must be transmitted to each M.P.O.'s local legislative delegation by February of each even-numbered year. This is intended to document regional planning accomplishments, and to improve communication between M.P.O.'s and their local legislative delegations.

Local Transportation Funding Issues

Current Situation

Local governments have been receiving a share of gas tax revenues since 1971. Today, there are several local fuel taxes, some of them optional and requiring either voter approval or majority vote of the local governing board.

Over the years, the Legislature has created opportunities for county and city governments to levy additional sales taxes or surtaxes, upon voter approval, to pay for large or expensive infrastructure projects. One such funding mechanism is the Charter County Transit System Surtax, created in 1976 by the Legislature to finance development, construction, and operation of fixed guideway, rapid transit systems in charter counties. Imposition of the surtax under current law requires voter approval.

This section of law has been amended several times since it was created, so that currently only counties that adopted a charter prior to January 1, 1984, may seek to levy a maximum 1 percent sales surtax, after voter approval, to finance a variety of transportation infrastructure as well as operation and maintenance of public bus systems.

Seven counties are eligible to levy the surtax: Broward, Duval, Hillsborough, Miami-Dade, Pinellas, Sarasota and Volusia. Only two have levied the surtax: Duval since 1989 and Miami-Dade since 2003. Each county levies a half-cent sales surtax. According to the state Department of Revenue, in FY 2004 the surtax in those two counties generated $194.3 million.

Some county and city officials in recent years have expressed an interest in having the surtax eligibility broadened beyond charter counties, commenting that a surtax on sales appears more palatable to taxpayers than raising fuel taxes. They also have cited rising costs of transportation construction materials and labor, the state's new emphasis on regional transportation solutions, and required local matches for new state transportation funding programs as reasons they support broadening the surtax.

Effect of Proposed Changes

HB 7077 amends 212.055(1), F.S., to rename the Charter County Transit System Surtax as the "County Transportation System Surtax." It deletes the requirement that only certain charter counties can levy the surtax. It also expands the surtax revenues' uses to include:

- Funding a regional transportation project identified in regional plans by M.P.O.'s, pursuant to s. 339.155(5), F.S.;
- As the local match for the new Transportation Regional Incentive Program, pursuant to s. 339.2819, F.S., or the New Starts transit program, pursuant to s. s. 341.051, F.S.;
- Certain capital improvement projects and concurrency projects identified in local comprehensive plans; and
- Funding bicycle and pedestrian paths.

The maximum 1-percent surtax could be levied either after passage of a referendum or by a supermajority vote of the total membership of a county's governing body. HB 7077 also includes a distribution formula, per interlocal agreement, so that counties can share the funds with municipalities. The formula takes into account population and centerline miles in the counties and cities.

Other Transportation Issues

HB 7077 includes a number of other transportation-related issues. Briefly:

Florida Transportation Commission

Currently, the four employees of the Florida Transportation Commission, the governor-appointed board that provides oversight of FDOT and makes transportation policy recommendations to the Governor and Legislature, are classified as Selected Exempt Service personnel for the purposes of salary and benefits.

HB 7077 specifies that the salary and benefits of the commission's executive director position shall be based on the Senior Management Service classification, and the rest of the commission's employees shall remain in the Selected Exempt Service classification.

Transportation Impacts of Slot Machine Gaming

During the 2005 regular and special sessions, legislation implementing a 2004 constitutional amendment allowing slot machine gambling in certain facilities in Broward and Miami-Dade counties included discussions on how to address transportation infrastructure impacts.

HB 7077 includes a proposal for an FDOT study of slot-machine gaming impacts on public highways and other transportation facilities. The proposal directs FDOT to conduct a study and draft a report of the impacts that slot machine gaming at pari-mutuel facilities and on Indian reservation lands are having on public roads and other transportation facilities, traffic congestion and other mobility issues, facility maintenance and repair costs, emergency evacuation readiness, costs of potential future widening or other improvements, and other impacts on the motoring, non-gaming public.

Due January 15, 2007, the report must include the following information:

- a listing, description, and functional classification of access roads;
- identification of those access roads that are scheduled for improvements within FDOT's Five-Year Work Program or a long-range transportation plan;
- recent traffic counts on the access roads and projected future usage, as well as projections of impacts on secondary, feeder, or connector roads, interstate highway exit and entrance ramps;
- safety and maintenance ratings of each access road and impacts on local and state emergency or evacuation services;
- the estimated infrastructure costs to maintain, improve, or widen access roads, based on future projected needs; and
- the feasibility of implementing or raising tolls on access roads to offset and mitigate traffic impacts and to finance projected future improvements.

FDOT also may include proposed legislation in the report, which must be submitted to the Governor and the Legislature.

Environmental Permitting Process

Part IV of chapter 373, F.S., regulates the management and storage of surface waters and stormwater runoff. The Florida Department of Environmental Protection (FDEP) and the five water management districts (WMDs) representing the state's five major watersheds or basins issue permits regulating public- and private-sector projects that impact wetlands, lakes, and other water bodies. Section 373.406, F.S., lists a number of exemptions from the required permits; typically these exemptions are for activities that have minimal negative impacts to the environment, or whose impacts are being mitigated by best-management practices.

FDOT is not exempt from this permitting process. Currently, even small-scale transportation activities, such as shoring up highway shoulders, adding bike lanes to existing highways, replacing bridges in the same "foot-print," and other safety improvements, are required to undergo the same environmental permitting requirements and meet many of the same standards as large-scale transportation projects.

HB 7077 amends several sections in Part IV, chapter 373, F.S., related to surface water permits. The bill creates exemptions for small-scale state transportation projects or activities, as defined in 373.4146, F.S. It also specifies that state transportation projects of less than five acres of wetlands impact may obtain general permits, rather than the more time-consuming individual permits.

The legislation also directs FDOT, FDEP, and the WMDs to develop three memoranda of understanding (MOU) within the next 30 months to address specific environmental issues. By January 1, 2007, an MOU governing the use of sovereign submerged and other state-owned lands for state transportation projects must be developed, as well as an MOU directing FDOT, FDEP, and the WMDs to develop a method for determining seasonal high-groundwater table elevation for state transportation projects. By July 1, 2008, the agencies must develop an MOU containing best management practices to handle roadway stormwater runoff.

Use of Recycled Materials

Section 336.044, F.S., created in 1988, directs FDOT to expand its usage of rubber tires, ash residue, recycled plastic, construction steel, and glass in construction projects, and to revise its rules and contract and bid specifications to eliminate any barriers to the use of recycled materials in transportation projects, where appropriate. FDOT is complying with the statute.

Under HB 7077, the existing section of law is moved to s. 334.70, F.S. Chapter 334, F.S., deals with FDOT administration issues, and is a more appropriate location for this section than Chapter 336, F.S., which deals with the County Road System.

The bill also adds gypsum to the recycled materials that FDOT may use in demonstration projects to determine whether it is suitable for highway construction.

Gypsum is a naturally occurring inorganic compound that has many commercial uses (such as plaster paneling in home construction, as plaster of Paris for art projects and surgical splints, as a thickening agent for tofu and flour, and as a cleaning agent in toothpaste). Gypsum also is a byproduct of the chemical processes that turn phosphate rock into phosphoric acid, which is a key ingredient in fertilizer and other products.

Florida mines about 30 percent of the world's phosphate, 90 percent of which is turned into phosphoric acid. Creating 1 ton of phosphoric acid also creates a byproduct of nearly 5 tons of this phosphogypsum, which under federal regulation is stored in huge stacks near the mining and chemical operations that create it. This phosphogypsum has limited uses in the United States because of concerns of its naturally occurring amount of radiation. Typically, it is used in this country as an agricultural soil additive, but research indicates that it might have acceptable uses as road-bed filler and landfill cover, depending on its level of radiation. The state of Texas is experimenting with a mixture of phosphogypsum and Portland cement as roadbed aggregate. In Europe and Japan, phosphogypsum is recycled for use in building materials.

General Aviation Airport Funding Match

Florida has at least 83 general aviation, or community, airports that provide a number of aviation-related services to their communities, but do not offer scheduled commercial flights.

State law allows FDOT to provide half of the local share of general aviation airport (GAA) project costs when federal funding is available as a 50-percent federal/50-percent local match. But many small GAAs and their local governments can't afford to pay the required 25-percent local match, according to FDOT staff, so the federal grant is rejected. Those funds then are likely spent in another state. If the GAA project is a priority, FDOT pays the majority of the cost from state aviation funds.

HB 7077 amends s. 332.007, F.S., to allow FDOT to apply federal GAA grant funds to an eligible project, then split the remaining cost on an 80-percent state/20-percent local matching basis. This would enable the state to draw down more federal aviation grant funding, and free up state aviation funding for other projects.

Other Arterial Road Funding

The share of funding for Other Arterial Roads – which are state roads used mostly by local motorists and aren't part of the Strategic Intermodal System (SIS) – is being reduced by FDOT in future years as SIS spending increases. In 2004, the Legislature specified that at least 50 percent of new flexible highway capacity funds must be allocated to the SIS/Emerging SIS and $100 million per year was provided to fund SIS/Emerging SIS projects. Eventually, FDOT plans to program as much as 72 percent of its new flexible highway capacity funds to SIS, meaning facilities not part of that network will compete for a smaller percentage of funds. Local governments and the M.P.O.'s have expressed concerns that local taxpayers may, by necessity, be forced to pay for improvements to the state-owned Arterial Roads.

HB 7077 appropriates $400 million in recurring general revenue, beginning in FY 06-07, to FDOT specifically for use to improve the Other Arterial Roads system. This amount will be indexed annually to the CPI, beginning in FY 07-08.

Effective date

HB 7077 takes effect July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Amends s. 112.061, F.S., to allow MPO's to set travel, per diem, subsistence, and mileage rates in excess of statutory maximums for non-state travelers.

Section 2: Amends s. 121.021, F.S., to add MPO's to the definitions of "local agency employer" and "regularly established position" for the purpose of ensuring that MPO employees are considered public employees eligible for participation in the Florida Retirement System.

Section 3: Amends s. 121.051, F.S., to add MPO's to the list of local governmental entities that may choose to have its employees participate in the Florida Retirement System.

Section 4: Amends s. 121.055, F.S., to add the executive director or staff director of each MPO to the list of public employees included in the "Senior Management Service Class."

Section 5: Amends s. 121.061, F.S., to add MPO's to the list of governmental entities that may deduct from public funds due a non-state employer any unpaid retirement system contributions. Allows MPO's to file suit to require any employer to remit the required retirement and Social Security contributions.

Section 6: Amends s. 121.081, F.S., to allow MPO employees to claim past service credits for the purposes of participating in the Florida Retirement System.

Section 7: Amends s. 316.605, F.S., to establish placement and display requirements for vehicle license plates.

Section 8: Amends s. 316.650, F.S., to specify that motorists who use tolled highways without paying the required tolls have the option to pay the tolling authority's fine and the unpaid toll, and the traffic citation is dropped and no points are assessed.

Section 9: Amends s. 318.14, F.S., to specify that motorists who use tolled highways without paying the required tolls can elect to pay the unpaid toll and the tolling authority's fine, or if not, have 45 days to either request a court hearing or to pay the specified fines.

Section 10: Amends s. 318.18, F.S., to raise the fine for motorists who fail to pay required tolls from $100 to $150. Specifies that if adjudication is withheld or a plea is entered prior to a court hearing, the fine is $100. Specifies distribution of fine proceeds. Specifies 60-day suspension of driver's license for motorists with 10 toll violations.

Section 11: Amends s. 320.061, F.S., to specify illegality of obscuring license plates with certain substances or products. Prohibits advertising, sale, distribution, purchase and use of such substances or products. Specifies law enforcement officers may issue citations to drivers whose plates are obscured and can confiscate the plates. Specifies that the Florida Attorney General may file suit against an entity or person involved in the sale and marketing of obscuring substances and products. Provides for injunctive relief, fines, and other penalties.

Section 12: Renumbers s. 336.044, F.S., as s. 334.70, F.S., related to FDOT's use of recycled materials in transportation construction projects. Adds gypsum to the recycled materials that FDOT may use in demonstration projects to determine their viability.

Section 13: Amends s. 338.161, F.S., to allow the Florida Turnpike and other tolling agencies to market their electronic toll-collection devices and to enter into contracts with private or public entities to provide for additional uses of those devices on- or off-system.

Section 14: Amends s. 338.2216, F.S., to change the certified roll-forward date of unexpended Florida Turnpike funds from December 31 to September 30 of each year.

Section 15: Amends s. 338.2275, F.S., to change the Florida Turnpike's bond cap to $6 billion of bonds outstanding.

Section 16: Amends s. 339.175, F.S., related to M.P.O.'s. Establishes officers; clarifies eligibility of certain elected officials to serve on M.P.O.'s; directs M.P.O.'s to appoint non-voting members representatives of transportation modes not otherwise serving on their boards; lists M.P.O.'s powers and duties; requires M.P.O.'s to submit progress report to their local legislative delegations; makes numerous technical changes.

Section 17: Amends s. 20.23, F.S., to switch the Florida Transportation Commission's executive director position from the Selected Exempt Service class to the Senior Management Service class..

Section 18: Amends s. 332.007, F.S., to give FDOT more flexibility to match federal grants for general aviation airports.

Section 19: Creates the Osceola Expressway Authority with specific powers and duties, membership requirements, and bonding authority.

Section 20: Amends s. 373.036, F.S., to correct a cross-reference.

Sections 21-26: Amends various sections in Part IV of chapter 373, F.S., to exempt certain small-scale transportation projects meeting certain criteria from environmental resource permits or dredge-and-fill permits. Directs FDOT, the Florida Department of Environmental Protection, and the WMDs to enter into memoranda of understanding on the issues of: use of state-owned lands, determination of seasonal high groundwater table elevation; and highway stormwater runoff. Corrects cross-references.

Section 27: Amends s. 348.0003, F.S., to reduce membership of the Miami-Dade Expressway Authority from 13 voting members to seven voting members and two non-voting members. Specifies composition of the authority.

Section 28: Amends s. 348.0004, F.S., to create new noticing requirements for the Miami-Dade Expressway Authority for proposed toll increases. Clarifies that expressway authorities not created pursuant to Part I of chapter 348, F.S., can utilize the public-private partnership provisions in s. 348.0004(9), F.S.

Section 29: Amends s. 348.754, F.S., to allow the Orlando-Orange County Expressway Authority to increase the bond-waiver amount for small businesses meeting certain eligibility requirements for its economic-development program. Requires the Authority to conduct bond-eligibility training for qualifying businesses. Requires the Authority to prepare a report on the program every two years and submit it to the Orange County legislative delegation, beginning December 31, 2008.

Section 30: Amends s. 212.055, F.S., to rename the Charter County Transit System Surtax as the "County Transportation System Surtax." Specifies the surtax may be approved by a referendum or a supermajority vote of the entire membership of a county governing board. Specifies distribution formula of surtax proceeds to a county and its municipalities. Specifies uses of surtax proceeds. Makes technical corrections.

Section 31: Directs FDOT to conduct a study of the impacts of slot-machine gaming at pari-mutuel facilities and Indian reservations on public transportation facilities. Specifies topics to be studied. Requires FDOT to submit its findings and recommendations in a report to the Governor, the Speaker of the House of Representatives, and the President of the Senate by January 15, 2007.

Section 32: Appropriates $400 million in recurring General Revenue, beginning in FY 2006-2007, to FDOT for construction projects on the state's Other Arterial Highways. Specifies the appropriation shall be adjusted annually based on the Consumer Price Index and rounded to the nearest dollar.

Section 33: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Section 15 of the bill would raise the Florida Turnpike Enterprise's bond cap from an absolute $4.5 billion in bonds to a limit of $6 billion in bonds outstanding. Therefore, as the Turnpike retires bond issues, it may issue more, as long as it does not exceed $6 billion owed at any time.

Section 18 of the bill would give FDOT the flexibility to provide a greater share of the local match required in order to obtain more federal general aviation grant funds.

2. Expenditures:

Section 32 of the bill directs the Legislature to appropriate $400 million in recurring General Revenue in FY 2006-2007 to FDOT for Other Arterial highway construction projects. In subsequent years, this appropriation will be indexed to the CPI. An analysis of how this appropriation could increase in coming years is below. This special appropriation earmarks general revenue funds for transportation that the Legislature could otherwise spend on education, health, or other statewide needs.

Year	CPI Forecast	Inflation	Real Appropriation	Nominal Appropriation
2006-07	201.8		$400,000,000	$400,000,000
2007-08	205.7	1.93%	$400,000,000	$407,730,426
2008-09	209.8	1.99%	$400,000,000	$415,857,284
2009-10	213.7	1.86%	$400,000,000	$423,587,711
2010-11	217.9	1.97%	$400,000,000	$431,912,785
2011-12	222.4	2.07%	$400,000,000	$440,832,507
2012-13	227.3	2.20%	$400,000,000	$450,545,094
2013-14	232.2	2.16%	$400,000,000	$460,257,681
2014-15	237.2	2.15%	$400,000,000	$470,168,484
2015-16	242.2	2.11%	$400,000,000	$480,079,286

Prepared by House Finance & Tax Committee

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Section 30 of the bill gives all 67 counties the opportunity to levy up to 1 percent sales surtax to pay for transportation infrastructure. Additionally, the surtax revenues would be shared with the municipalities within those counties that levied the surtax. The fiscal impact is indeterminate at this time, because it is unknown how many local governments would levy in the surtax.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Legislature last raised the Turnpike bond cap in 2003, from $3 billion to $4.5 billion.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 7077 does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

FDOT, FDEP, and the WMDs appear to have sufficient existing rulemaking authority to implement the various provisions in HB 7077, should they become law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Transportation Committee

At its Feb. 7, 2006, meeting, the House Transportation Committee adopted 10 amendments to this bill in its original form as PCB TR 06-04. A brief description of the amendments follows:

- Amendment #1 specified that the proposed new county surtax could be levied by a supermajority vote of the entire membership of a county commission, rather than by a majority vote.
- Amendment #2 added the New Starts transit program as an eligible use of the county surtax funds.
- Amendments #3 and #4 were technical changes to the provisions related to M.P.O. participation in the Florida Retirement System.
- Amendment #5 corrected a scrivener's error on the voting membership and non-voting membership of the MDX.
- Amendment #6 was a technical amendment inserting inadvertently omitted words related to fines for non-payment of tolls.
- Amendment #7 amended s. 348.0004(9), F.S., to clarify that notwithstanding any law to the contrary, any expressway authority, transportation authority, bridge authority, or toll authority, established either in statute or by local ordinance pursuant to Part I of chapter 348, F.S., could participate in public-private partnerships for transportation infrastructure.
- Amendment #8 clarified that the Transportation Commission's executive director position would be reclassified as Senior Management Service and the remaining employee positions would remain as Selected Exempt Service.
- Amendment #9 added gypsum to the recycled materials that FDOT can use in demonstration projects.
- Amendment #10 changed the $400 million, one-time expenditure of general revenue for other arterial road projects to a recurring appropriation tied to the CPI.

The committee then voted 14-1 to report PCB TR 06-04 as favorable. After it was reported out of committee, the legislation was designated by the House Clerk's Office as HB 7077.

A bill to be entitled

An act relating to transportation; amending s. 112.061, F.S.; authorizing metropolitan planning organizations and certain separate entities to establish per diem and travel reimbursement rates; amending s. 121.021, F.S.; revising the definition of "local agency employer" to include metropolitan planning organizations and certain separate entities for purposes of the Florida Retirement System Act; revising the definition of "regularly established position" to include positions in metropolitan planning organizations; amending s. 121.051, F.S.; providing for metropolitan planning organizations to participate in the Florida Retirement System; amending s. 121.055, F.S.; requiring certain metropolitan planning organization and similar entity staff positions to be in the Senior Management Service Class of the Florida Retirement System; amending s. 121.061, F.S.; providing for enforcement of certain employer funding contributions required under the Florida Retirement System; authorizing deductions of amounts owed from certain funds distributed to a metropolitan planning organization; authorizing the governing body of a metropolitan planning organization to file and maintain an action in court to require an employer to remit retirement or social security member contributions or employer matching payments; amending s. 121.081, F.S.; providing for metropolitan planning organization officers and staff to claim past service for retirement benefits; amending s. 316.605, F.S.; providing

height and placement requirements for vehicle license plates; prohibiting display that obscures identification of the letters and numbers on a license plate; providing penalties; amending s. 316.650, F.S.; revising procedures for disposition of citations issued for failure to pay toll; providing that the citation will not be submitted to the court and no points will be assessed on the driver's license if the person cited elects to make payment directly to the governmental entity that issued the citation; providing for reporting of the citation by the governmental entity to the Department of Highway Safety and Motor Vehicles; amending s. 318.14, F.S.; providing for the amount required to be paid under certain procedures for disposition of a citation issued for failure to pay toll; providing for the person cited to request a court hearing; amending s. 318.18, F.S.; revising penalties for failure to pay a prescribed toll; providing for disposition of amounts received by the clerk of court; revising procedures for withholding of adjudication; providing for suspension of a driver's license under certain circumstances; amending s. 320.061, F.S.; prohibiting interfering with the legibility, angular visibility, or detectability of any feature or detail on a license plate or interfering with the ability to photograph or otherwise record any feature or detail on a license plate; prohibiting advertising, sale, distribution, purchase, or use of any product made for such purpose; providing penalties; providing for a law

enforcement officer to issue a citation and confiscate a cover or other device obstructing the visibility or electronic image recording of a plate or to confiscate a license plate physically treated with a substance or material that is obstructing the visibility or electronic image recording of the plate; requiring the Department of Highway Safety and Motor Vehicles to revoke the registration of a plate so altered; providing for the Attorney General to file suit against any entity offering or marketing a product advertised as having the capacity to obstruct the visibility or electronic image recording of a license plate; renumbering and amending s. 336.044, F.S., relating to Department of Transportation use of recovered materials in construction programs; adding gypsum to the list of materials authorized for use in certain demonstration projects; amending s. 338.161, F.S.; providing for the Department of Transportation and certain toll agencies to enter into agreements with public or private entities for additional uses of electronic toll collection products and services; amending s. 338.2216, F.S.; changing the carryforward date on certain undisbursed Florida Turnpike Enterprise funds; amending s. 338.2275, F.S.; raising the limit on outstanding bonds to fund turnpike projects; amending s. 339.175, F.S.; specifying that a metropolitan planning organization is a separate legal entity independent of entities represented on the M.P.O. and signatories to the agreement creating the M.P.O.; providing for transfer of responsibilities and

liabilities to the new M.P.O. upon execution of a new interlocal agreement by the governmental entities constituting the M.P.O.; providing for selection of certain officers; revising requirements for voting membership; specifying certain constitutional and charter officers are not elected officials of a general-purpose local government for voting membership purposes; establishing a process for appointing alternate members; revising provisions for nonvoting advisers; revising provisions for employment of staff by an M.P.O.; providing for training of certain persons who serve on an M.P.O. for certain purposes; providing additional powers and duties of M.P.O.'s; directing M.P.O.'s to develop coordinated transportation planning processes under certain conditions; requiring a report; revising voting requirements for approval of certain plans and programs and amendments thereto; amending s. 20.23, F.S.; providing that the salary and benefits of the executive director of the Florida Transportation Commission shall be set in accordance with the Senior Management Service; amending s. 332.007, F.S.; authorizing the Department of Transportation to provide funds for certain general aviation projects under certain circumstances; redesignating part X of chapter 348, F.S.; creating part X of chapter 348, F.S.; creating the "Osceola County Expressway Authority Law"; providing definitions; creating the authority as an agency of the state; providing for membership, terms, organization, personnel, and

administration; providing purposes and powers for construction, expansion, maintenance, improvement, and operation of the Osceola County Expressway System; providing for use of certain funds to pay obligations; requiring consent of local and county jurisdiction for agreements that would restrict construction of roads; providing for bond financing of improvements to certain facilities; providing for issuance of bonds; providing for rights and remedies granted to bondholders; providing for appointment of a trustee to represent the bondholders; providing for appointment of a receiver to take possession of and operate and maintain the system; providing for lease of the system to the Department of Transportation under a lease-purchase agreement; authorizing the department to act in place of the authority under terms of the lease-purchase agreement; requiring approval by the county for certain provisions of the lease-purchase agreement; providing that the system is part of the state road system; authorizing the department to expend a limited amount of funds; providing for the authority to appoint the department as its agent for certain construction purposes; authorizing the authority to acquire property; limiting liability of the authority for contamination existing on an acquired property; providing for remedial acts necessary due to such contamination; authorizing agreements between the authority and other entities; providing a pledge of the state to bondholders; exempting the authority from taxation; providing for

application and construction of the part; amending s. 373.036, F.S.; correcting a cross-reference; amending s. 373.406, F.S.; exempting certain transportation projects from certain requirements for management and storage of surface waters; amending ss. 373.4135 and 373.4136, F.S.; correcting cross-references; amending s. 373.414, F.S.; exempting certain transportation projects and activities from specified public-interest criteria relating to surface waters and wetlands; amending s. 373.4145, F.S.; exempting certain transportation projects and activities within the geographical jurisdiction of the Northwest Florida Water Management District from certain permitting requirements; creating s. 373.4146, F.S.; specifying transportation projects and activities that are exempt from certain requirements for management and storage of surface waters; providing for application of certain requirements relating to stormwater discharge, impact review, acreage thresholds, wetland impacts and general permits, and minimum width or acreage restrictions on stormwater treatment facilities; directing the Department of Environmental Protection, the water management districts, and the Department of Transportation to develop memorandums of understanding relating to the use of sovereign submerged lands or other state-owned lands, a method for determining the seasonal high groundwater table elevation, and best management practices to treat or minimize identified constituents of highway stormwater runoff; providing for application of the memorandums to

transportation projects and activities; amending s. 348.0003, F.S.; revising the membership of expressway authority governing boards in certain counties; amending s. 348.0004, F.S.; providing for public notice of a proposed toll increase by certain expressway authorities; authorizing a transportation authority, bridge authority, or toll authority to receive or solicit proposals and enter into agreements with private entities for certain transportation facility purposes; providing for application of specified provisions to use of certain additional powers by certain expressway authorities, transportation authorities, bridge authorities, or toll authorities; amending s. 348.754, F.S.; authorizing the Orlando-Orange County Expressway Authority to waive payment and performance bonds on certain construction contracts if the contract is awarded pursuant to an economic development program for the encouragement of local small businesses; providing criteria for participation in the program; providing criteria for the bond waiver; providing for certain determinations by the authority's executive director or a designee as to the suitability of a project; providing for certain payment obligations if a payment and performance bond is waived; requiring the authority to record notice of the obligation; limiting eligibility to bid on the projects; providing for the authority to conduct bond eligibility training for certain businesses; requiring the authority to submit biennial reports to the Orange County

legislative delegation; amending s. 212.055, F.S.; renaming the Charter County Transit System Surtax as the County Transportation System Surtax; authorizing all counties to levy a discretionary sales surtax; providing for approval by the governing body or the electorate of the county; providing for distribution to the county and municipalities by interlocal agreement or a certain apportionment formula; providing for distribution of the surtax by certain charter counties; providing for application to certain counties in which the surtax currently exists; providing for application to existing agreements; revising authorized uses of the surtax to include bicycle and pedestrian facilities, certain transportation projects and transit programs, certain capital improvements, and concurrency management; directing the Department of Transportation to conduct a study of the access roads to pari-mutuel facilities and Indian reservation lands where gaming activities occur; providing for content of the study; requiring a report to the Governor and the Legislature; providing ongoing appropriations for fixed capital outlay projects for arterial highway construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (14) of section 112.061, Florida Statutes, is amended to read:

112.061 Per diem and travel expenses of public officers, employees, and authorized persons.--

(14) APPLICABILITY TO COUNTIES, COUNTY OFFICERS, DISTRICT SCHOOL BOARDS, AND SPECIAL DISTRICTS.--

(a) Rates that exceed the maximum travel reimbursement rates for nonstate travelers specified in paragraph (6)(a) for per diem, in paragraph (6)(b) for subsistence, and in subparagraph (7)(d)1. for mileage may be established by:

1. The governing body of a county by the enactment of an ordinance or resolution;

2. A county constitutional officer, pursuant to s. 1(d), Art. VIII of the State Constitution, by the establishment of written policy;

3. The governing body of a district school board by the adoption of rules; ~~or~~

4. The governing body of a special district, as defined in s. 189.403(1), except those special districts that are subject to s. 166.021(10), by the enactment of a resolution; or

5. Any metropolitan planning organization created pursuant to s. 339.175, or any separate legal or administrative entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member, by enactment of a resolution.

(b) Rates established pursuant to paragraph (a) must apply uniformly to all travel by the county, county constitutional officer and entity governed by that officer, district school board, or special district.

(c) Except as otherwise provided in this subsection, counties, county constitutional officers and entities governed

by those officers, district school boards, and special districts, other than those subject to s. 166.021(10), remain subject to the requirements of this section.

Section 2. Paragraph (a) of subsection (42) and paragraph (b) of subsection (52) of section 121.021, Florida Statutes, are amended to read:

121.021 Definitions.--The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(42)(a) "Local agency employer" means the board of county commissioners or other legislative governing body of a county, however styled, including that of a consolidated or metropolitan government; a clerk of the circuit court, sheriff, property appraiser, tax collector, or supervisor of elections, provided such officer is elected or has been appointed to fill a vacancy in an elective office; a community college board of trustees or district school board; or the governing body of any city, metropolitan planning organization created pursuant to s. 339.175, or any separate legal or administrative entity created pursuant to s. 339.175, or special district of the state which participates in the system for the benefit of certain of its employees.

(52) "Regularly established position" is defined as follows:

(b) In a local agency (district school board, county agency, community college, city, metropolitan planning organization, or special district), the term means a regularly

established position which will be in existence for a period beyond 6 consecutive months, except as provided by rule.

Section 3. Paragraph (b) of subsection (2) of section 121.051, Florida Statutes, is amended to read:

121.051 Participation in the system.--

(2) OPTIONAL PARTICIPATION.--

(b)1. The governing body of any municipality, metropolitan planning organization, or special district in the state may elect to participate in the system upon proper application to the administrator and may cover all or any of its units as approved by the Secretary of Health and Human Services and the administrator. The department shall adopt rules establishing provisions for the submission of documents necessary for such application. Prior to being approved for participation in the Florida Retirement System, the governing body of any such municipality, metropolitan planning organization, or special district that has a local retirement system shall submit to the administrator a certified financial statement showing the condition of the local retirement system as of a date within 3 months prior to the proposed effective date of membership in the Florida Retirement System. The statement must be certified by a recognized accounting firm that is independent of the local retirement system. All required documents necessary for extending Florida Retirement System coverage must be received by the department for consideration at least 15 days prior to the proposed effective date of coverage. If the municipality, metropolitan planning organization, or special district does not

comply with this requirement, the department may require that the effective date of coverage be changed.

2. Any city, metropolitan planning organization, or special district that has an existing retirement system covering the employees in the units that are to be brought under the Florida Retirement System may participate only after holding a referendum in which all employees in the affected units have the right to participate. Only those employees electing coverage under the Florida Retirement System by affirmative vote in said referendum shall be eligible for coverage under this chapter, and those not participating or electing not to be covered by the Florida Retirement System shall remain in their present systems and shall not be eligible for coverage under this chapter. After the referendum is held, all future employees shall be compulsory members of the Florida Retirement System.

3. The governing body of any city, metropolitan planning organization, or special district complying with subparagraph 1. may elect to provide, or not provide, benefits based on past service of officers and employees as described in s. 121.081(1). However, if such employer elects to provide past service benefits, such benefits must be provided for all officers and employees of its covered group.

4. Once this election is made and approved it may not be revoked, except pursuant to subparagraphs 5. and 6., and all present officers and employees electing coverage under this chapter and all future officers and employees shall be compulsory members of the Florida Retirement System.

5. Subject to the conditions set forth in subparagraph 6., the governing body of any hospital licensed under chapter 395 which is governed by the board of a special district as defined in s. 189.403(1) or by the board of trustees of a public health trust created under s. 154.07, hereinafter referred to as "hospital district," and which participates in the system, may elect to cease participation in the system with regard to future employees in accordance with the following procedure:

a. No more than 30 days and at least 7 days before adopting a resolution to partially withdraw from the Florida Retirement System and establish an alternative retirement plan for future employees, a public hearing must be held on the proposed withdrawal and proposed alternative plan.

b. From 7 to 15 days before such hearing, notice of intent to withdraw, specifying the time and place of the hearing, must be provided in writing to employees of the hospital district proposing partial withdrawal and must be published in a newspaper of general circulation in the area affected, as provided by ss. 50.011-50.031. Proof of publication of such notice shall be submitted to the Department of Management Services.

c. The governing body of any hospital district seeking to partially withdraw from the system must, before such hearing, have an actuarial report prepared and certified by an enrolled actuary, as defined in s. 112.625(3), illustrating the cost to the hospital district of providing, through the retirement plan that the hospital district is to adopt, benefits for new

employees comparable to those provided under the Florida Retirement System.

d. Upon meeting all applicable requirements of this subparagraph, and subject to the conditions set forth in subparagraph 6., partial withdrawal from the system and adoption of the alternative retirement plan may be accomplished by resolution duly adopted by the hospital district board. The hospital district board must provide written notice of such withdrawal to the division by mailing a copy of the resolution to the division, postmarked no later than December 15, 1995. The withdrawal shall take effect January 1, 1996.

6. Following the adoption of a resolution under sub-subparagraph 5.d., all employees of the withdrawing hospital district who were participants in the Florida Retirement System prior to January 1, 1996, shall remain as participants in the system for as long as they are employees of the hospital district, and all rights, duties, and obligations between the hospital district, the system, and the employees shall remain in full force and effect. Any employee who is hired or appointed on or after January 1, 1996, may not participate in the Florida Retirement System, and the withdrawing hospital district shall have no obligation to the system with respect to such employees.

Section 4. Paragraph (l) is added to subsection (1) of section 121.055, Florida Statutes, to read:

121.055 Senior Management Service Class.--There is hereby established a separate class of membership within the Florida Retirement System to be known as the "Senior Management Service Class," which shall become effective February 1, 1987.

(1)

(1) For each metropolitan planning organization that has opted to become part of the Florida Retirement System, participation in the Senior Management Service Class shall be compulsory for the executive director or staff director of that metropolitan planning organization or similar entity created pursuant to s. 339.175.

Section 5. Paragraphs (a) and (c) of subsection (2) of section 121.061, Florida Statutes, are amended to read:

121.061 Funding.--

(2)(a) Should any employer other than a state employer fail to make the retirement and social security contributions, both member and employer contributions, required by this chapter, then, upon request by the administrator, the Department of Revenue or the Department of Financial Services, as the case may be, shall deduct the amount owed by the employer from any funds to be distributed by it to the county, city, metropolitan planning organization, special district, or consolidated form of government. The amounts so deducted shall be transferred to the administrator for further distribution to the trust funds in accordance with this chapter.

(c) The governing body of each county, city, metropolitan planning organization, special district, or consolidated form of government participating under this chapter or the administrator, acting individually or jointly, is hereby authorized to file and maintain an action in the courts of the state to require any employer to remit any retirement or social security member contributions or employer matching payments due

the retirement or social security trust funds under the provisions of this chapter.

Section 6. Paragraphs (a), (b), and (e) of subsection (1) of section 121.081, Florida Statutes, are amended to read:

121.081 Past service; prior service; contributions.--Conditions under which past service or prior service may be claimed and credited are:

(1)(a) Past service, as defined in s. 121.021(18), may be claimed as creditable service by officers or employees of a city, metropolitan planning organization, or special district that become a covered group under this system. The governing body of a covered group in compliance with s. 121.051(2)(b) may elect to provide benefits with respect to past service earned prior to January 1, 1975, in accordance with this chapter, and the cost for such past service shall be established by applying the following formula: The member contribution for both regular and special risk members shall be 4 percent of the gross annual salary for each year of past service claimed, plus 4-percent employer matching contribution, plus 4 percent interest thereon compounded annually, figured on each year of past service, with interest compounded from date of annual salary earned until July 1, 1975, and 6.5 percent interest compounded annually thereafter until date of payment. Once the total cost for a member has been figured to date, then after July 1, 1975, 6.5 percent compounded interest shall be added each June 30 thereafter on any unpaid balance until the cost of such past service liability is paid in full. The following formula shall be used in calculating past service earned prior to January 1, 1975: (Annual gross salary

multiplied by 8 percent) multiplied by the 4 percent or 6.5 percent compound interest table factor, as may be applicable. The resulting product equals cost to date for each particular year of past service.

(b) Past service earned after January 1, 1975, may be claimed by officers or employees of a city, metropolitan planning organization, or special district that becomes a covered group under this system. The governing body of a covered group may elect to provide benefits with respect to past service earned after January 1, 1975, in accordance with this chapter, and the cost for such past service shall be established by applying the following formula: The employer shall contribute an amount equal to the contribution rate in effect at the time the service was earned, multiplied by the employee's gross salary for each year of past service claimed, plus 6.5 percent interest thereon, compounded annually, figured on each year of past service, with interest compounded from date of annual salary earned until date of payment.

(e) Past service, as defined in s. 121.021(18), may be claimed as creditable service by a member of the Florida Retirement System who formerly was an officer or employee of a city, metropolitan planning organization, or special district, notwithstanding the status or form of the retirement system, if any, of that city, metropolitan planning organization, or special district and irrespective of whether officers or employees of that city, metropolitan planning organization, or special district now or hereafter become a covered group under the Florida Retirement System. Such member may claim creditable

service and be entitled to the benefits accruing to the regular class of members as provided for the past service claimed under this paragraph by paying into the retirement trust fund an amount equal to the total actuarial cost of providing the additional benefit resulting from such past-service credit, discounted by the applicable actuarial factors to date of retirement.

Section 7. Subsection (1) of section 316.605, Florida Statutes, is amended to read:

316.605 Licensing of vehicles.--

(1) Every vehicle, at all times while driven, stopped, or parked upon any highways, roads, or streets of this state, shall be licensed in the name of the owner thereof in accordance with the laws of this state unless such vehicle is not required by the laws of this state to be licensed in this state and shall, except as otherwise provided in s. 320.0706 for front-end registration license plates on truck tractors and s. 320.086(5) which exempts display of license plates on described former military vehicles, display the license plate or both of the license plates assigned to it by the state, one on the rear and, if two, the other on the front of the vehicle, each to be securely fastened to the vehicle outside the main body of the vehicle <u>not higher than 60 inches and not lower than 12 inches from the ground and</u> in such manner as to prevent the plates from swinging, and all letters, numerals, printing, writing, and other identification marks upon the plates regarding the word "Florida," the registration decal, and the alphanumeric designation shall be clear and distinct and free from

defacement, mutilation, grease, and other obscuring matter, so that they will be plainly visible and legible at all times 100 feet from the rear or front. Vehicle license plates shall be affixed and displayed in such a manner that the letters and numerals shall be read from left to right parallel to the ground. No vehicle license plate may be displayed in an inverted or reversed position or in such a manner that the letters and numbers and their proper sequence are not readily identifiable. Nothing shall be placed upon the face of a Florida plate except as permitted by law or by rule or regulation of a governmental agency. No license plates other than those furnished by the state shall be used. However, if the vehicle is not required to be licensed in this state, the license plates on such vehicle issued by another state, by a territory, possession, or district of the United States, or by a foreign country, substantially complying with the provisions hereof, shall be considered as complying with this chapter. A violation of this subsection is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

Section 8. Paragraph (b) of subsection (3) of section 316.650, Florida Statutes, is amended to read:

316.650 Traffic citations.--

(3)

(b) If a traffic citation is issued pursuant to s. 316.1001, a traffic enforcement officer may deposit the original and one copy of such traffic citation or, in the case of a traffic enforcement agency that has an automated citation system, may provide an electronic facsimile with a court having

jurisdiction over the alleged offense or with its traffic violations bureau within 45 days after the date of issuance of the citation to the violator. If the person cited for the violation of s. 316.1001 makes the election provided by s. 318.14(12) and pays the fine imposed by the toll authority plus the amount of the unpaid toll that is shown on the traffic citation directly to the governmental entity that issued the citation in accordance with s. 318.14(12), the traffic citation will not be submitted to the court, the disposition will be reported to the department by the governmental entity that issued the citation, and no points will be assessed against the person's driver's license.

Section 9. Subsection (12) of section 318.14, Florida Statutes, is amended to read:

318.14 Noncriminal traffic infractions; exception; procedures.--

(12) Any person cited for a violation of s. 316.1001 may, in lieu of making an election as set forth in subsection (4) or s. 318.18(7), elect to pay a ~~his or her~~ fine of $25, or such other amount as imposed by the toll authority, plus the amount of the unpaid toll that is shown on the traffic citation directly to the governmental entity that issued the citation~~,~~ within 30 days after the date of issuance of the citation. Any person cited for a violation of s. 316.1001 who does not elect to pay the fine imposed by the toll authority plus the amount of the unpaid toll that is shown on the traffic citation directly to the governmental entity that issued the citation as described in this subsection ~~section~~ shall have an additional 45 days

after the date of the issuance of the citation in which to request a court hearing or to pay the civil penalty and delinquent fee, if applicable, as provided in s. 318.18(7), either by mail or in person, in accordance with subsection (4).

Section 10. Subsection (7) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of civil penalties.--The penalties required for a noncriminal disposition pursuant to s. 318.14 are as follows:

(7) Mandatory $150 plus the amount of the unpaid toll shown on the traffic citation for each citation issued ~~One hundred dollars~~ for a violation of s. 316.1001. The clerk of the court shall forward $50 of the $150 fine received plus the amount of the unpaid toll that is shown on the citation to the governmental entity that issued the citation. If adjudication is withheld or there is a plea arrangement prior to a hearing, there shall be a minimum mandatory cost assessed per citation of $100 plus the amount of the unpaid toll for each citation issued. The clerk of the court shall forward $50 of the $100 plus the amount of the unpaid toll as shown on the citation to the governmental entity that issued the citation. The court shall have specific authority to consolidate issued citations for the same defendant for the purpose of sentencing and aggregate jurisdiction. In addition, the department shall suspend for 60 days the driver's license of a person who is convicted of 10 violations of s. 316.1001 within a 36-month period. ~~However, a person may elect to pay $30 to the clerk of the court, in which case adjudication is withheld, and no points~~

~~are assessed under s. 322.27. Upon receipt of the fine, the clerk of the court must retain $5 for administrative purposes and must forward the $25 to the governmental entity that issued the citation.~~ Any funds received by a governmental entity for this violation may be used for any lawful purpose related to the operation or maintenance of a toll facility.

Section 11. Section 320.061, Florida Statutes, is amended to read:

320.061 Unlawful to alter motor vehicle registration certificates, license plates, mobile home stickers, or validation stickers or to obscure license plates; penalty.--

(1) No person shall alter the original appearance of any registration license plate, mobile home sticker, validation sticker, or vehicle registration certificate issued for and assigned to any motor vehicle or mobile home, whether by mutilation, alteration, defacement, or change of color or in any other manner. Any person who violates ~~the provisions of~~ this subsection commits ~~section is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2)(a) No person shall apply or attach any substance, reflective matter, illuminated device, spray, coating, covering, or other material onto or around any license plate that interferes with the legibility, angular visibility, or detectability of any feature or detail on the license plate or interferes with the ability to photograph or otherwise record any feature or detail on the license plate. The advertising, sale, distribution, purchase, or use of any product made for the

purpose of interfering with the legibility, angular visibility, or detectability of any feature or detail on a license plate or interfering with the ability to photograph or otherwise record any feature or detail on a license plate is prohibited. Any person who violates this paragraph commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If a state or local law enforcement officer having jurisdiction observes that a cover or other device is obstructing the visibility or electronic image recording of a license plate, the officer shall issue a uniform traffic citation and shall confiscate the cover or other device that obstructs the visibility or electronic image recording of the plate. If a state or local law enforcement officer having jurisdiction observes that a license plate has been physically treated with a substance, reflective matter, spray, coating, or other material that is obstructing the visibility or electronic image recording of the plate, the officer shall issue a uniform traffic citation and shall confiscate the plate. The department shall revoke the registration of any plate that has been found by a court to have been physically altered with any chemical or reflective substance or coating that obstructs the visibility or electronic image recording of the plate.

(c) The Attorney General may file suit against any individual or entity offering or marketing the sale of, including via the Internet, any product advertised as having the capacity to obstruct the visibility or electronic image recording of a license plate. In addition to injunctive and

monetary relief, punitive damages, and attorney's fees, the suit shall also seek a full accounting of the records of all sales to residents of or entities within this state.

Section 12. Section 336.044, Florida Statutes, is renumbered as section 334.70, Florida Statutes, and amended to read:

334.70 ~~336.044~~ Use of recyclable materials in construction.--

(1) It is the intent of the Legislature that the Department of Transportation continue to expand its current use of recovered materials in its construction programs.

(2) The Legislature declares it to be in the public interest to find alternative ways to use certain recyclable materials that currently are part of the solid waste stream and that contribute to problems of declining space in landfills. To determine the feasibility of using certain recyclable materials for paving materials, the department may undertake demonstration projects using the following materials in road construction:

(a) Ground rubber from automobile tires in road resurfacing or subbase materials for roads.~~;~~

(b) Ash residue from coal combustion byproducts for concrete and ash residue from waste incineration facilities and oil combustion byproducts for subbase material.~~;~~

(c) Recycled mixed-plastic material for guardrail posts or right-of-way fence posts.~~;~~

(d) Construction steel, including reinforcing rods and I-beams, manufactured from scrap metals disposed of in the state.~~;~~ ~~and~~

(e) Glass~~,~~ and glass aggregates.

(f) Gypsum.

(3) The department shall review and revise existing bid procedures and specifications for the purchase or use of products and materials to eliminate any procedures and specifications that explicitly discriminate against products and materials with recycled content, except where such procedures and specifications are necessary to protect the health, safety, and welfare of the people of this state.

(4) The department shall review and revise its bid procedures and specifications on a continuing basis to encourage the use of products and materials with recycled content and shall, in developing new procedures and specifications, encourage the use of products and materials with recycled content.

(5) All agencies shall cooperate with the department in carrying out the provisions of this section.

Section 13. Subsection (3) is added to section 338.161, Florida Statutes, to read:

338.161 Authority of department to advertise and promote electronic toll collection.--

(3) The department or any toll agency created by statute is authorized to incur expenses and advertise or promote electronic toll collection through agreements with any private or public entity that provides for additional uses of its electronic toll collection products and services on or off the turnpike or toll system, provided that the department or toll

agency has determined it can increase nontoll revenues or add convenience or other value for its customers.

Section 14. Paragraph (b) of subsection (3) of section 338.2216, Florida Statutes, is amended to read:

338.2216 Florida Turnpike Enterprise; powers and authority.--

(3)

(b) Notwithstanding the provisions of s. 216.301 to the contrary and in accordance with s. 216.351, the Executive Office of the Governor shall, on July 1 of each year, certify forward all unexpended funds appropriated or provided pursuant to this section for the turnpike enterprise. Of the unexpended funds certified forward, any unencumbered amounts shall be carried forward. Such funds carried forward shall not exceed 5 percent of the total operating budget of the turnpike enterprise. Funds carried forward pursuant to this section may be used for any lawful purpose, including, but not limited to, promotional and market activities, technology, and training. Any certified forward funds remaining undisbursed on September 30 ~~December 31~~ of each year shall be carried forward.

Section 15. Subsection (1) of section 338.2275, Florida Statutes, is amended to read:

338.2275 Approved turnpike projects.--

(1) Legislative approval of the department's tentative work program that contains the turnpike project constitutes approval to issue bonds as required by s. 11(f), Art. VII of the State Constitution. No more than $6 billion of bonds may be outstanding to fund approved turnpike projects. ~~Turnpike~~

~~projects approved to be included in future tentative work programs include, but are not limited to, projects contained in the 2003-2004 tentative work program. A maximum of $4.5 billion of bonds may be issued to fund approved turnpike projects.~~

Section 16. Paragraphs (e) and (f) are added to subsection (1) of section 339.175, Florida Statutes, and paragraphs (a) and (b) of subsection (2), paragraphs (a) and (b) of subsection (3), and subsections (5) and (12) of that section are amended, to read:

339.175 Metropolitan planning organization.--It is the intent of the Legislature to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight within and through urbanized areas of this state while minimizing transportation-related fuel consumption and air pollution. To accomplish these objectives, metropolitan planning organizations, referred to in this section as M.P.O.'s, shall develop, in cooperation with the state and public transit operators, transportation plans and programs for metropolitan areas. The plans and programs for each metropolitan area must provide for the development and integrated management and operation of transportation systems and facilities, including pedestrian walkways and bicycle transportation facilities that will function as an intermodal transportation system for the metropolitan area, based upon the prevailing principles provided in s. 334.046(1). The process for developing such plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and

comprehensive, to the degree appropriate, based on the complexity of the transportation problems to be addressed. To ensure that the process is integrated with the statewide planning process, M.P.O.'s shall develop plans and programs that identify transportation facilities that should function as an integrated metropolitan transportation system, giving emphasis to facilities that serve important national, state, and regional transportation functions. For the purposes of this section, those facilities include the facilities on the Strategic Intermodal System designated under s. 339.63 and facilities for which projects have been identified pursuant to s. 339.2819(4).

(1) DESIGNATION.--

(e) An M.P.O. is a public body corporate and politic. The members of the governing body shall be the members of the agency, but such members constitute the head of a legal entity separate, distinct, and independent from the governing body of any county, municipality, or other entity that is an entity represented on the M.P.O. or a signatory to the interlocal agreement creating the M.P.O. Upon execution of a new interlocal agreement by the governmental entities constituting the M.P.O. after redesignation or reapportionment, the new M.P.O. is subject to all of the responsibilities and liabilities imposed or incurred by the existing agency.

(f) The governing body of the M.P.O. shall designate, at minimum, a chair, vice chair, and agency clerk. The chair and vice chair shall be selected from among the members of the governing board. The agency clerk shall be a member of the governing board, an employee of the M.P.O., or another natural

person and shall be charged with the responsibility of preparing meeting minutes and maintaining agency records.

Each M.P.O. required under this section must be fully operative no later than 6 months following its designation.

(2) VOTING MEMBERSHIP.--

(a) The voting membership of an M.P.O. shall consist of not fewer than 5 or more than 19 apportioned members, the exact number to be determined on an equitable geographic-population ratio basis by the Governor, based on an agreement among the affected units of general-purpose local government as required by federal rules and regulations. The Governor, in accordance with 23 U.S.C. s. 134, may also provide for M.P.O. members who represent municipalities to alternate with representatives from other municipalities within the metropolitan planning area that do not have members on the M.P.O. County commission members shall compose not less than one-third of the M.P.O. membership, except for an M.P.O. with more than 15 members located in a county with a 5-member ~~five-member~~ county commission or an M.P.O. with 19 members located in a county with no more than 6 county commissioners, in which case county commission members may compose less than one-third percent of the M.P.O. membership, but all county commissioners must be members. All voting members shall be elected officials of general-purpose local governments, except that an M.P.O. may include, as part of its apportioned voting members, a member of a statutorily authorized planning board, an official of an agency that operates or administers a major mode of transportation, or an

official of the Florida Space Authority. As used in this section, elected officials of a general-purpose local government shall exclude constitutional or charter officers, including sheriffs, tax collectors, supervisors of elections, property appraisers, clerks of the court, and similar types of officials. County commissioners ~~The county commission~~ shall compose not less than 20 percent of the M.P.O. membership if an official of an agency that operates or administers a major mode of transportation has been appointed to an M.P.O.

(b) In metropolitan areas in which authorities or other agencies have been or may be created by law to perform transportation functions and are performing transportation functions that are not under the jurisdiction of a general-purpose ~~general purpose~~ local government represented on the M.P.O., they shall be provided voting membership on the M.P.O. In all other M.P.O.'s where transportation authorities or agencies are to be represented by elected officials from general-purpose ~~general purpose~~ local governments, the M.P.O. shall establish a process by which the collective interests of such authorities or other agencies are expressed and conveyed.

(3) APPORTIONMENT.--

(a) The Governor shall, with the agreement of the affected units of general-purpose local government as required by federal rules and regulations, apportion the membership on the applicable M.P.O. among the various governmental entities within the area. At the request of a majority of the affected units of general-purpose local government comprising an M.P.O., the Governor and a majority of units of general-purpose local

governments serving on an M.P.O. ~~and~~ shall cooperatively agree upon and prescribe who may serve as an alternate member and a method for appointing alternate members who may vote at any M.P.O. meeting that an alternate member attends in place of a regular member. The methodology shall be set forth as a part of the interlocal agreement describing the M.P.O.'s membership or in the M.P.O.'s operating procedures and bylaws. ~~An appointed alternate member must be an elected official serving the same governmental entity or a general purpose local government with jurisdiction within all or part of the area that the regular member serves.~~ The governmental entity so designated shall appoint the appropriate number of members to the M.P.O. from eligible officials. Representatives of the department shall serve as nonvoting members of the M.P.O. governing board. Nonvoting advisers may be appointed by the M.P.O. as deemed necessary; however, to the maximum extent feasible, each M.P.O. shall seek to appoint nonvoting representatives of various multimodal forms of transportation not otherwise represented by voting members of the M.P.O. An M.P.O. shall appoint nonvoting advisers representing major military installations upon the request of the major military installations and subject to the agreement of the M.P.O. All nonvoting advisers may attend and participate fully in governing board meetings but shall not vote and shall not be members of the governing board. The Governor shall review the composition of the M.P.O. membership in conjunction with the decennial census as prepared by the United States Department of Commerce, Bureau of the Census, and reapportion it as necessary to comply with subsection (2).

(b) Except for members who represent municipalities on the basis of alternating with representatives from other municipalities that do not have members on the M.P.O. as provided in paragraph (2)(a), the members of an M.P.O. shall serve 4-year terms. Members who represent municipalities on the basis of alternating with representatives from other municipalities that do not have members on the M.P.O. as provided in paragraph (2)(a) may serve terms of up to 4 years as further provided in the interlocal agreement described in paragraph (1)(b). The membership of a member who is a public official automatically terminates upon the member's leaving his or her elective or appointive office for any reason, or may be terminated by a majority vote of the total membership of the entity's governing board ~~a county or city governing entity~~ represented by the member. A vacancy shall be filled by the original appointing entity. A member may be reappointed for one or more additional 4-year terms.

(5) POWERS, DUTIES, AND RESPONSIBILITIES.--The powers, privileges, and authority of an M.P.O. are those specified in this section or incorporated in an interlocal agreement authorized under s. 163.01. Each M.P.O. shall perform all acts required by federal or state laws or rules, now and subsequently applicable, which are necessary to qualify for federal aid. It is the intent of this section that each M.P.O. shall be involved in the planning and programming of transportation facilities, including, but not limited to, airports, intercity and high-speed rail lines, seaports, and intermodal facilities, to the extent permitted by state or federal law.

(a) Each M.P.O. shall, in cooperation with the department, develop:

1. A long-range transportation plan pursuant to the requirements of subsection (6);

2. An annually updated transportation improvement program pursuant to the requirements of subsection (7); and

3. An annual unified planning work program pursuant to the requirements of subsection (8).

(b) In developing the long-range transportation plan and the transportation improvement program required under paragraph (a), each M.P.O. shall provide for consideration of projects and strategies that will:

1. Support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

2. Increase the safety and security of the transportation system for motorized and nonmotorized users;

3. Increase the accessibility and mobility options available to people and for freight;

4. Protect and enhance the environment, promote energy conservation, and improve quality of life;

5. Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

6. Promote efficient system management and operation; and

7. Emphasize the preservation of the existing transportation system.

(c) In order to provide recommendations to the department and local governmental entities regarding transportation plans and programs, each M.P.O. shall:

1. Prepare a congestion management system for the metropolitan area and cooperate with the department in the development of all other transportation management systems required by state or federal law;

2. Assist the department in mapping transportation planning boundaries required by state or federal law;

3. Assist the department in performing its duties relating to access management, functional classification of roads, and data collection;

4. Execute all agreements or certifications necessary to comply with applicable state or federal law;

5. Represent all the jurisdictional areas within the metropolitan area in the formulation of transportation plans and programs required by this section; and

6. Perform all other duties required by state or federal law.

(d) Each M.P.O. shall appoint a technical advisory committee that includes planners; engineers; representatives of local aviation authorities, port authorities, and public transit authorities or representatives of aviation departments, seaport departments, and public transit departments of municipal or county governments, as applicable; the school superintendent of each county within the jurisdiction of the M.P.O. or the superintendent's designee; and other appropriate representatives of affected local governments. In addition to any other duties

assigned to it by the M.P.O. or by state or federal law, the technical advisory committee is responsible for considering safe access to schools in its review of transportation project priorities, long-range transportation plans, and transportation improvement programs, and shall advise the M.P.O. on such matters. In addition, the technical advisory committee shall coordinate its actions with local school boards and other local programs and organizations within the metropolitan area which participate in school safety activities, such as locally established community traffic safety teams. Local school boards must provide the appropriate M.P.O. with information concerning future school sites and in the coordination of transportation service.

(e)1. Each M.P.O. shall appoint a citizens' advisory committee, the members of which serve at the pleasure of the M.P.O. The membership on the citizens' advisory committee must reflect a broad cross section of local residents with an interest in the development of an efficient, safe, and cost-effective transportation system. Minorities, the elderly, and the handicapped must be adequately represented.

2. Notwithstanding the provisions of subparagraph 1., an M.P.O. may, with the approval of the department and the applicable federal governmental agency, adopt an alternative program or mechanism to ensure citizen involvement in the transportation planning process.

(f) The department shall allocate to each M.P.O., for the purpose of accomplishing its transportation planning and

programming duties, an appropriate amount of federal transportation planning funds.

(g) Each M.P.O. shall have an executive or staff director, who reports directly to the M.P.O. governing board for all matters regarding the administration and operation of the M.P.O., and any additional personnel as deemed necessary. The executive director and any additional personnel may be employed either by an M.P.O. or by another governmental entity, such as a county, city, or regional planning council, that has a signed staff services agreement in effect with the M.P.O. In addition, an M.P.O. ~~may employ personnel or~~ may enter into contracts with local or state governmental agencies, private planning or engineering firms, or other private ~~engineering~~ firms to accomplish its transportation planning and programming duties and administrative functions required by state or federal law.

(h) Each M.P.O. shall provide training opportunities for local elected officials and others who serve on an M.P.O. in order to enhance their knowledge, effectiveness, and participation in the urbanized area transportation planning process. The training opportunities may be conducted by an individual M.P.O. or through statewide and federal training programs and initiatives that are specifically designed to meet the needs of M.P.O. board members.

(i) In addition to the powers set forth in this section, M.P.O.'s shall have the powers set forth in this paragraph. The enumeration of the following powers is not intended to be an exhaustive list of all M.P.O. powers:

1. To grant, sell, hold, donate, dedicate, or lease or otherwise convey title, easements, or use rights in real property, including tax-reverted real property, title to which is in such public agency or separate legal entity, to any other public agency or separate legal entity created under interlocal agreement. Real property and interests in real property granted or conveyed to an M.P.O. shall be for a public purpose that may not necessarily be contemplated in the interlocal agreement.

2. To appropriate funds and sell, give, or otherwise supply personnel, services, facilities, property, franchises, or funds thereof to any party designated to operate the joint or cooperative undertaking.

3. To receive grants-in-aid or other assistance funds from the Federal Government or this state for use in carrying out transportation-related purposes.

4. To have all of the privileges and immunities from liability as set forth in the State Constitution, s. 768.28, and otherwise and to have exemptions from laws, ordinances, and rules applicable to public agencies of the state. An M.P.O. shall ascertain whether, as a separate and distinct body politic and corporate entity, it should purchase separate public liability or workers' compensation insurance.

5. To have and provide pensions and relief, disability benefits, workers' compensation, employee salary compensation and reimbursement, and other benefits which apply to the activity of its officers or employees when performing their respective functions.

6. To employ agencies or employees.

7. To acquire, construct, manage, maintain, or operate buildings, works, or improvements.

8. To incur debts, liabilities, or obligations that do not constitute the debts, liabilities, or obligations of any of the parties to the agreement unless specifically and in writing assumed by any of the parties to the interlocal agreement creating the M.P.O.

9. To appoint a legal counsel or legal staff of its choice. If the legal counsel is also an attorney for an entity that is a member of the M.P.O., both the M.P.O. governing board and the member entity's governing body shall waive any potential for ethical conflict.

10. In addition to its other powers as set forth in this section and in s. 163.01, to have such powers as are provided for under federal law or federal administrative rules.

(j) ~~(h)~~ A chair's coordinating committee is created, composed of the M.P.O.'s serving Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties. The committee must, at a minimum:

1. Coordinate transportation projects deemed to be regionally significant by the committee.

2. Review the impact of regionally significant land use decisions on the region.

3. Review all proposed regionally significant transportation projects in the respective transportation improvement programs which affect more than one of the M.P.O.'s represented on the committee.

4. Institute a conflict resolution process to address any conflict that may arise in the planning and programming of such regionally significant projects.

(k) ~~(i)~~ 1. The Legislature finds that the state's rapid growth in recent decades has caused many urbanized areas subject to M.P.O. jurisdiction to become contiguous to each other. As a result, various transportation projects may cross from the jurisdiction of one M.P.O. into the jurisdiction of another M.P.O. To more fully accomplish the purposes for which M.P.O.'s have been mandated, M.P.O.'s shall develop coordination mechanisms with one another to expand and improve transportation within the state. The appropriate method of coordination between M.P.O.'s shall vary depending upon the project involved and given local and regional needs. Consequently, it is appropriate to set forth a flexible methodology that can be used by M.P.O.'s to coordinate with other M.P.O.'s and appropriate political subdivisions as circumstances demand.

2. Any M.P.O. may join with any other M.P.O. or any individual political subdivision to coordinate activities or to achieve any federal or state transportation planning or development goals or purposes consistent with federal or state law. When an M.P.O. determines that it is appropriate to join with another M.P.O. or any political subdivision to coordinate activities, the M.P.O. or political subdivision shall enter into an interlocal agreement pursuant to s. 163.01, which, at a minimum, creates a separate legal or administrative entity to coordinate the transportation planning or development activities required to achieve the goal or purpose; provides ~~provide~~ the

purpose for which the entity is created; provides ~~provide~~ the duration of the agreement and the entity~~,~~ and specifies ~~specify~~ how the agreement may be terminated, modified, or rescinded; describes ~~describe~~ the precise organization of the entity, including who has voting rights on the governing board, whether alternative voting members are provided for, how voting members are appointed, and what the relative voting strength is for each constituent M.P.O. or political subdivision; provides ~~provide~~ the manner in which the parties to the agreement will provide for the financial support of the entity and payment of costs and expenses of the entity; provides ~~provide~~ the manner in which funds may be paid to and disbursed from the entity; and provides ~~provide~~ how members of the entity will resolve disagreements regarding interpretation of the interlocal agreement or disputes relating to the operation of the entity. Such interlocal agreement shall become effective upon its recordation in the official public records of each county in which a member of the entity created by the interlocal agreement has a voting member. This paragraph does not require any M.P.O.'s to merge, combine, or otherwise join together as a single M.P.O.

3. Each M.P.O. located within an urbanized area consisting of more than one M.P.O., or located in an urbanized area that is immediately adjacent to an M.P.O. serving a different urbanized area, shall coordinate with other M.P.O.'s in the urbanized area or the contiguous and adjacent M.P.O.'s to develop a report demonstrating how a coordinated transportation planning process is being developed and the results of the coordinated planning process. The report should include the progress on implementing

a coordinated long-range transportation plan covering the combined metropolitan planning area that serves as the basis for the transportation improvement program of each M.P.O., separate and coordinated long-range transportation plans for the affected M.P.O.'s, a coordinated priority process for regional projects, and a regional public involvement process. The report shall be submitted to members of the M.P.O.'s local legislative delegation by no later than February of each even-numbered year and may be submitted as a joint report by two or more M.P.O.'s or separate coordinated reports by individual M.P.O.'s.

(12) VOTING REQUIREMENTS.--Each long-range transportation plan required pursuant to subsection (6), each annually updated Transportation Improvement Program required under subsection (7), and each amendment that affects projects in the first 3 years of such plans and programs must be approved by each M.P.O. on a supermajority ~~recorded~~ roll call vote or hand-counted vote of a majority plus one of the membership present.

Section 17. Paragraph (h) of subsection (2) of section 20.23, Florida Statutes, is amended to read:

20.23 Department of Transportation.--There is created a Department of Transportation which shall be a decentralized agency.

(2)

(h) The commission shall appoint an executive director and assistant executive director, who shall serve under the direction, supervision, and control of the commission. The executive director, with the consent of the commission, shall employ such staff as are necessary to perform adequately the

functions of the commission, within budgetary limitations. All employees of the commission are exempt from part II of chapter 110 and shall serve at the pleasure of the commission. The salaries and benefits of all employees of the commission, except for the executive director, shall be set in accordance with the Selected Exempt Service; ~~provided,~~ however, ~~that~~ the salary and benefits of the executive director shall be set in accordance with the Senior Management Service. The commission shall have complete authority for fixing the salary of the executive director and assistant executive director.

Section 18. Paragraph (c) of subsection (6) of section 332.007, Florida Statutes, is amended to read:

332.007 Administration and financing of aviation and airport programs and projects; state plan.--

(6) Subject to the availability of appropriated funds, the department may participate in the capital cost of eligible public airport and aviation development projects in accordance with the following rates, unless otherwise provided in the General Appropriations Act or the substantive bill implementing the General Appropriations Act:

(c) When federal funds are not available, the department may fund up to 80 percent of master planning and eligible aviation development projects at publicly owned, publicly operated airports. If federal funds are available but insufficient to meet the maximum authorized federal share, the department may fund up to 80 percent of the nonfederal share of such projects. Such funding is limited to airports that have no scheduled commercial service.

Section 19. Part X of chapter 348, Florida Statutes, is redesignated as part XI, and a new part X, consisting of sections 348.9801, 348.9802, 348.9803, 348.9804, 348.9805, 348.9806, 348.9807, 348.9808, 348.9809, 348.9811, 348.9812, 348.9813, 348.9814, 348.9815, 348.9816, and 348.9817, is added to that chapter to read:

PART X

Osceola County Expressway Authority

348.9801 Short title.--This part may be cited as the "Osceola County Expressway Authority Law."

348.9802 Definitions.--The following terms, whenever used or referred to in this part, shall have the following meanings, except in those instances where the context clearly indicates otherwise:

(1) "Agency of the state" means and includes the state and any department of, or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by, the state.

(2) "Authority" means the body politic and corporate and agency of the state created by this part.

(3) "Bonds" means and includes the notes, bonds, refunding bonds, or other evidences of indebtedness or obligations, in either temporary or definitive form, which the authority is authorized to issue pursuant to this part.

(4) "County" means Osceola County.

(5) "Department" means the Department of Transportation.

(6) "Expressway" is the same as limited access expressway.

(7) "Federal agency" means and includes the United States,

the President of the United States, and any department of or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States.

(8) "Lease-purchase agreement" means the lease-purchase agreements which the authority is authorized pursuant to this part to enter into with the department.

(9) "Limited access expressway" means a street or highway especially designed for through traffic and over, from, or to which no person shall have the right of easement, use, or access except in accordance with the rules and regulations promulgated and established by the authority for the use of such facility. Such highways or streets may be parkways from which trucks, buses, and other commercial vehicles shall be excluded or they may be freeways open to use by all customary forms of street and highway traffic.

(10) "Members" means the governing body of the authority, and the term "member" means one of the individuals constituting such governing body.

(11) "Osceola County gasoline tax funds" means all of the 80-percent surplus gasoline tax funds accruing in each year to the department for use in Osceola County under the provisions of s. 9, Art. XII of the State Constitution after deduction only of any amounts of said gasoline tax funds heretofore pledged by the department or the county for outstanding obligations.

(12) "Osceola County Expressway System" means any and all expressways and appurtenant facilities thereto, including, but not limited to, all approaches, roads, bridges, and avenues of access for said expressways that are either built by the

authority or whose ownership is transferred to the authority by other governmental or private entities.

(13) "State Board of Administration" means the body corporate existing under the provisions of s. 9, Art. XII of the State Constitution or any successor thereto.

348.9803 Osceola County Expressway Authority.--

(1) There is hereby created and established a body politic and corporate, an agency of the state, to be known as the Osceola County Expressway Authority, hereinafter referred to as "authority."

(2)(a) The governing body of the authority shall consist of six members. Three members shall be citizens of Osceola County, who shall be appointed by the governing body of the county. Two members shall be citizens of Osceola County appointed by the Governor. The term of each appointed member shall be for 4 years. However, the members appointed by the Governor for the first time shall serve a term of 2 years. Each appointed member shall hold office until his or her successor has been appointed and has qualified. A vacancy occurring during a term shall be filled only for the balance of the unexpired term. Each appointed member of the authority shall be a person of outstanding reputation for integrity, responsibility, and business ability, but no person who is an officer or employee of any city or of Osceola County in any other capacity shall be an appointed member of the authority. A member of the authority shall be eligible for reappointment.

(b) Members of the authority may be removed from office by the Governor for misconduct, malfeasance, or nonfeasance in

office.

(c) The district secretary of the department serving in the district that includes Osceola County shall serve as an ex officio, nonvoting member.

(3)(a) The authority shall elect one of its members as chair of the authority. The authority shall also elect a secretary and a treasurer who may or may not be members of the authority. The chair, secretary, and treasurer shall hold such offices at the will of the authority.

(b) Four members of the authority shall constitute a quorum, and the vote of three members shall be necessary for any action taken by the authority. No vacancy in the authority shall impair the right of a quorum of the authority to exercise all of the rights and perform all of the duties of the authority.

(4)(a) The authority may employ an executive secretary, an executive director, its own counsel and legal staff, technical experts, such engineers, and such employees, permanent or temporary, as it may require; may determine the qualifications and fix the compensation of such persons, firms, or corporations; and may employ a fiscal agent or agents. However, the authority shall solicit sealed proposals from at least three persons, firms, or corporations for the performance of any services as fiscal agents. The authority may delegate to one or more of its agents or employees such of its power as it shall deem necessary to carry out the purposes of this part, subject always to the supervision and control of the authority.

(b) Members of the authority shall be entitled to receive from the authority their travel and other necessary expenses

incurred in connection with the business of the authority as provided in s. 112.061, but they shall draw no salaries or other compensation.

348.9804 Purposes and powers.--

(1)(a) The authority created and established by the provisions of this part is hereby granted and shall have the right to acquire, hold, construct, improve, maintain, operate, own, and lease in the capacity of lessor the Osceola County Expressway System, hereinafter referred to as "system."

(b) It is the express intention of this part that the authority, in the construction of the Osceola County Expressway System, shall be authorized to construct any extensions, additions, or improvements to the system or appurtenant facilities, including all necessary approaches, roads, bridges, and avenues of access with such changes, modifications, or revisions of the project as shall be deemed desirable and proper.

(2) The authority is hereby granted and shall have and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of its purposes, including, but not limited to, the following rights and powers:

(a) To sue and be sued, implead and be impleaded, and complain and defend in all courts.

(b) To adopt, use, and alter at will a corporate seal.

(c) To acquire by donation or otherwise, purchase, hold, lease as lessee, and use any franchise or property, real, personal, or mixed, tangible or intangible, or any options thereof, in its own name or in conjunction with others, or

interest therein, necessary or desirable for carrying out the purposes of the authority, and to sell, lease as lessor, transfer, and dispose of any property or interest therein at any time acquired by it.

(d) To enter into and make leases for terms not exceeding 40 years as either lessee or lessor in order to carry out the right to lease as set forth in this part.

(e) To enter into and make lease-purchase agreements with the department for terms not exceeding 40 years or until any bonds secured by a pledge of rentals thereunder and any refundings thereof are fully paid as to both principal and interest, whichever is longer.

(f) To fix, alter, charge, establish, and collect rates, fees, rentals, and other charges for the services and facilities of the Osceola County Expressway System, which rates, fees, rentals, and other charges shall always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to this part; however, such right and power may be assigned or delegated by the authority to the department.

(g) To borrow money and make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations, either in temporary or definitive form, in this part sometimes called "bonds" of the authority, for the purpose of financing all or part of the improvement or extension of the Osceola County Expressway System and appurtenant facilities, including all approaches, streets, roads, bridges, and avenues of access for the Osceola County Expressway System and for any other purpose authorized by this part, said bonds to mature in

not exceeding 40 years after the date of the issuance thereof, and to secure the payment of such bonds or any part thereof by a pledge of any or all of its revenues, rates, fees, rentals, or other charges, including all or any portion of the Osceola County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department; and, in general, to provide for the security of the bonds and the rights and remedies of the holders thereof. However, no portion of the Osceola County gasoline tax funds shall be pledged for the construction of any project for which a toll is to be charged unless the anticipated tolls are reasonably estimated by the board of county commissioners, at the date of its resolution pledging said funds, to be sufficient to cover the principal and interest of such obligations during the period when said pledge of funds shall be in effect.

1. The authority shall reimburse Osceola County for any sums expended from said gasoline tax funds used for the payment of such obligations. Any gasoline tax funds so disbursed shall be repaid when the authority deems it practicable, together with interest at the highest rate applicable to any obligations of the authority.

2. If the authority determines to fund or refund any bonds theretofore issued by the authority or by the board of county commissioners as aforesaid prior to the maturity thereof, the proceeds of the funding or refunding bonds shall, pending the prior redemption of the bonds to be funded or refunded, be invested in direct obligations of the United States. It is the express intention of this part that such outstanding bonds may

be funded or refunded by the issuance of bonds pursuant to this part.

(h) To make contracts of every name and nature, including, but not limited to, partnerships providing for participation in ownership and revenues, and to execute all instruments necessary or convenient for the carrying on of its business.

(i) Without limitation of the foregoing, to borrow money and accept grants from and to enter into contracts, leases, or other transactions with any federal agency, the state, any agency of the state, Osceola County, or with any other public body of the state.

(j) To have the power of eminent domain, including the procedural powers granted under chapters 73 and 74.

(k) To pledge, hypothecate, or otherwise encumber all or any part of the revenues, rates, fees, rentals, or other charges or receipts of the authority, including all or any portion of the Osceola County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department, as security for all or any of the obligations of the authority.

(l) To enter into partnership and other agreements respecting ownership and revenue participation in order to facilitate financing and constructing any project or portions thereof.

(m) To participate in developer agreements or to receive developer contributions.

(n) To contract with Osceola County for the operation of a toll facility within the county.

(o) To do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority in order to carry out the powers granted to it by this part or any other law.

(p) With the consent of the county within whose jurisdiction the following activities occur, to construct, operate, and maintain roads, bridges, avenues of access, thoroughfares, and boulevards outside the jurisdictional boundaries of Osceola County together with the right to construct, repair, replace, operate, install, and maintain electronic toll payment systems thereon with all necessary and incidental powers to accomplish the foregoing.

(3) The authority shall have no power at any time or in any manner to pledge the credit or taxing power of the state or any political subdivision or agency thereof, including Osceola County, nor shall any of the authority's obligations be deemed to be obligations of the state or of any political subdivision or agency thereof, nor shall the state or any political subdivision or agency thereof, except the authority, be liable for the payment of the principal of or interest on such obligations.

(4) Anything in this part to the contrary notwithstanding, acquisition of right-of-way for a project of the authority which is within the boundaries of any municipality in Osceola County shall not be started unless and until the route of said project within said municipality has been given prior approval by the governing body of said municipality.

(5) Anything in this part to the contrary notwithstanding,

acquisition of right-of-way for a project of the authority which is within the unincorporated area of Osceola County shall not be started unless and until the route of said project within the unincorporated area has been given prior approval by the governing body of Osceola County.

(6) The authority shall have no power other than by consent of Osceola County or any affected city to enter into any agreement which would legally prohibit the construction of any road by Osceola County or by any municipality within Osceola County.

348.9805 Authority for bond financing of improvements.--Pursuant to s. 11(f), Art. VII of the State Constitution, the Legislature hereby approves for bond financing by the Osceola County Expressway Authority improvements to toll collection facilities, interchanges to the legislatively approved expressway system, and any other facility appurtenant, necessary, or incidental to the approved system. Subject to terms and conditions of applicable revenue bond resolutions and covenants, such costs may be financed in whole or in part by revenue bonds issued pursuant to s. 348.9806(1)(a) or (b) whether currently issued or issued in the future, or by a combination of such bonds.

348.9806 Bonds of the authority.--

(1)(a) Bonds may be issued on behalf of the authority pursuant to the State Bond Act.

(b) Alternatively, the authority may issue its own bonds pursuant to this part at such times and in such principal amount as, in the opinion of the authority, is necessary to provide

sufficient moneys for achieving its purposes; however, such bonds may not pledge the full faith and credit of the state. Bonds issued by the authority pursuant to this paragraph or paragraph (a), whether on original issuance or on refunding, shall be authorized by resolution of the members thereof, may be either term or serial bonds, and shall bear such date or dates, mature at such time or times, not exceeding 40 years after their respective dates, bear interest at such rate or rates, payable semiannually, be in such denominations, be in such form, either coupon or fully registered, carry such registration, exchangeability, and interchangeability privileges, be payable in such medium of payment and at such place or places, be subject to such terms of redemption, and be entitled to such priorities on the revenues, rates, fees, rentals, or other charges or receipts of the authority including the Osceola County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department, as such resolution or any resolution subsequent thereto may provide. The bonds shall be executed either by manual or facsimile signature by such officers as the authority shall determine, provided that such bonds shall bear at least one signature which is manually executed thereon, and the coupons attached to such bonds shall bear the facsimile signature or signatures of such officer or officers as shall be designated by the authority and shall have the seal of the authority affixed, imprinted, reproduced, or lithographed thereon, all as may be prescribed in such resolution or resolutions.

(c) Bonds issued pursuant to paragraph (a) or paragraph (b) shall be sold at public sale in the same manner provided by the State Bond Act. However, if the authority shall, by official action at a public meeting, determine that a negotiated sale of such bonds is in the best interest of the authority, the authority may negotiate the sale of such bonds with the underwriter designated by the authority and the Division of Bond Finance of the State Board of Administration with respect to bonds issued pursuant to paragraph (a) or solely the authority with respect to bonds issued pursuant to paragraph (b). The authority's determination to negotiate the sale of such bonds may be based, in part, upon the written advice of the authority's financial adviser. Pending the preparation of definitive bonds, interim certificates may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the authority may determine.

(d) The authority may issue bonds pursuant to paragraph (b) to refund any bonds previously issued regardless of whether the bonds being refunded were issued by the authority pursuant to this chapter or on behalf of the authority pursuant to the State Bond Act.

(2) Any such resolution or resolutions authorizing any bonds hereunder may contain provisions which shall be part of the contract with the holders of such bonds, as to:

(a) The pledging of all or any part of the revenues, rates, fees, rentals (including all or any portion of the Osceola County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between

the authority and the department, or any part thereof), or other charges or receipts of the authority, derived by the authority, from the Osceola County Expressway System.

(b) The completion, improvement, operation, extension, maintenance, repair, lease, or lease-purchase agreement of said system and the duties of the authority and others, including the department, with reference thereto.

(c) Limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant by the United States or the state may be applied.

(d) The fixing, charging, establishing, and collecting of rates, fees, rentals, or other charges for use of the services and facilities of the Osceola County Expressway System or any part thereof.

(e) The setting aside of reserves or sinking funds or repair and replacement funds and the regulation and disposition thereof.

(f) Limitations on the issuance of additional bonds.

(g) The terms and provisions of any lease-purchase agreement, deed of trust, or indenture securing the bonds or under which the same may be issued.

(h) Any other or additional agreements with the holders of the bonds which the authority may deem desirable and proper.

(3) The authority may employ fiscal agents as provided by this part or the State Board of Administration may, upon request of the authority, act as fiscal agent for the authority in the issuance of any bonds which may be issued pursuant to this part. The State Board of Administration may, upon request of the

authority, take over the management, control, administration, custody, and payment of any or all debt services or funds or assets now or hereafter available for any bonds issued pursuant to this part. The authority may enter into any deeds of trust, indentures, or other agreements with its fiscal agent or with any bank or trust company within or without the state as security for such bonds and may, under such agreements, sign and pledge all or any of the revenues, rates, fees, rentals, or other charges or receipts of the authority, including all or any portion of the Osceola County gasoline tax funds received by the authority pursuant to the terms of any lease-purchase agreement between the authority and the department, thereunder. Such deed of trust, indenture, or other agreement may contain such provisions as are customary in such instruments or, as the authority may authorize, including, but without limitation, provisions as to:

(a) The completion, improvement, operation, extension, maintenance, repair, and lease of or lease-purchase agreement relating to the Osceola County Expressway System and the duties of the authority and others including the department with reference thereto.

(b) The application of funds and the safeguarding of funds on hand or on deposit.

(c) The rights and remedies of the trustee and the holders of the bonds.

(d) The terms and provisions of the bonds or the resolutions authorizing the issuance of same.

(4) Any of the bonds issued pursuant to this part are, and

are hereby declared to be, negotiable instruments and shall have all the qualities and incidents of negotiable instruments under the law merchant and the negotiable instruments law of the state.

(5) Notwithstanding any of the provisions of this part, each project, building, or facility which has been financed by the issuance of bonds or other evidence of indebtedness under this part and any refinancing thereof is hereby approved as provided for in s. 11(f), Art. VII of the State Constitution.

348.9807 Remedies of the bondholders.--

(1) The rights and the remedies herein conferred upon or granted to the bondholders shall be in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or resolutions providing for the issuance of bonds or by a lease-purchase agreement, deed of trust, indenture, or other agreement under which the bonds may be issued or secured. If the authority defaults in the payment of the principal of or interest on any of the bonds issued pursuant to the provisions of this part after such principal of or interest on said bonds becomes due, whether at maturity or upon call for redemption, or if the department defaults in any payments under or covenants made in any lease-purchase agreement between the authority and the department and such default continues for a period of 30 days or if the authority or the department fails or refuses to comply with the provisions of this part or any agreement made with or for the benefit of the holders of the bonds, the holders of 25 percent in aggregate principal amount of the bonds then outstanding shall be entitled

as of right to the appointment of a trustee to represent such bondholders for the purposes hereof; provided that such holders of 25 percent in aggregate principal amount of the bonds then outstanding shall have first given notice to the authority and to the department of their intention to appoint a trustee. Such notice shall be deemed to have been given if given in writing, deposited in a securely sealed postpaid wrapper, mailed at a regularly maintained United States post office box or station, and addressed, respectively, to the chair of the authority and to the Secretary of Transportation at the principal office of the department.

(2) Such trustee and any trustee under any deed of trust, indenture, or other agreement may and, upon written request of the holders of 25 percent or such other percentages as may be specified in any deed of trust, indenture, or other agreement aforesaid, in principal amount of the bonds then outstanding, shall in any court of competent jurisdiction in his, her, or its own name:

(a) By mandamus or other suit, action, or proceeding at law or in equity, enforce all rights of the bondholders, including the right to require the authority to fix, establish, maintain, collect, and charge rates, fees, rentals, and other charges adequate to carry out any agreement as to or pledge of the revenues or receipts of the authority to carry out any other covenants and agreements with or for the benefit of the bondholders, and to perform its and their duties under this part.

(b) By mandamus or other suit, action, or proceeding at

law or in equity, enforce all rights of the bondholders under or pursuant to any lease-purchase agreement between the authority and the department, including the right to require the department to make all rental payments required to be made by it under the provisions of any such lease-purchase agreement, whether from the Osceola County gasoline tax funds or other funds of the department so agreed to be paid, and to require the department to carry out any other covenants and agreements with or for the benefit of the bondholders and to perform its and their duties under this part.

(c) Bring suit upon the bonds.

(d) By action or suit in equity, require the authority or the department to account as if it were the trustee of an express trust for the bondholders.

(e) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders.

(3) Whether or not all bonds have been declared due and payable, any trustee, when appointed under this section or acting under a deed of trust, indenture, or other agreement, shall be entitled as of right to the appointment of a receiver who may enter upon and take possession of the Osceola County Expressway System or the facilities or any part or parts thereof, the rates, fees, rentals, or other revenues, charges, or receipts from which are or may be applicable to the payment of the bonds so in default, and, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department, operate and maintain the same for

and on behalf and in the name of the authority, the department, and the bondholders and collect and receive all rates, fees, rentals, and other charges or receipts or revenues arising therefrom in the same manner as the authority or the department might do, and shall deposit all such moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action, or proceeding by the trustee, the fees, counsel fees, and expenses of the trustee and said receiver, if any, and all costs and disbursements allowed by the court shall be a first charge on any rates, fees, rentals, or other charges, revenues, or receipts derived from the Osceola County Expressway System or the facilities or services or any part or parts thereof, including payments under any such lease-purchase agreement as aforesaid which said rates, fees, rentals, or other charges, revenues, or receipts shall or may be applicable to the payment of the bonds so in default. Such trustee shall also have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth in this part or incident to the representation of the bondholders in the enforcement and protection of their rights.

(4) Nothing in this section or any other section of this part shall authorize any receiver appointed pursuant to this part for the purpose, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department, of operating and maintaining the Osceola County Expressway System or any facilities or part or parts thereof to sell, assign, mortgage, or otherwise dispose of any of the assets of whatever kind and character belonging to the

authority. It is the intention of this part to limit the powers of such receiver, subject to and in compliance with the provisions of any lease-purchase agreement between the authority and the department, to the operation and maintenance of the Osceola County Expressway System or any facility or part or parts thereof, as the court may direct, in the name and for and on behalf of the authority, the department, and the bondholders. No holder of bonds on the authority nor any trustee shall ever have the right in any suit, action, or proceeding at law or in equity to compel a receiver, nor shall any receiver be authorized or any court be empowered to direct the receiver, to sell, assign, mortgage, or otherwise dispose of any assets of whatever kind or character belonging to the authority.

348.9808 Lease-purchase agreement.--

(1) In order to effectuate the purposes of this part and as authorized by this part, the authority may enter into a lease-purchase agreement with the department relating to and covering the Osceola County Expressway System.

(2) Such lease-purchase agreement shall provide for the leasing of the Osceola County Expressway System by the authority as lessor to the department as lessee, shall prescribe the term of such lease and the rentals to be paid thereunder, and shall provide that, upon the completion of the faithful performance thereunder and the termination of such lease-purchase agreement, title in fee simple absolute to the Osceola County Expressway System as then constituted shall be transferred in accordance with law by the authority to the state and the authority shall deliver to the department such deeds and conveyances as shall be

necessary or convenient to vest title in fee simple absolute in the state.

(3) Such lease-purchase agreement may include such other provisions, agreements, and covenants as the authority and the department deem advisable or required, including, but not limited to, provisions as to the bonds to be issued under and for the purposes of this part; the completion, extension, improvement, operation, and maintenance of the Osceola County Expressway System; the expenses and the cost of operation of said authority; the charging and collection of tolls, rates, fees, and other charges for the use of the services and facilities thereof; the application of federal or state grants or aid which may be made or given to assist the authority in the completion, extension, improvement, operation, and maintenance of the Orlando Expressway System which the authority is hereby authorized to accept and apply to such purposes; the enforcement of payment and collection of rentals; and any other terms, provisions, or covenants necessary, incidental, or appurtenant to the making of and full performance under such lease-purchase agreement.

(4) The department as lessee under such lease-purchase agreement is hereby authorized to pay as rentals thereunder any rates, fees, charges, funds, moneys, receipts, or income accruing to the department from the operation of the Osceola County Expressway System and the Osceola County gasoline tax funds and may also pay as rentals any appropriations received by the department pursuant to any act of the Legislature heretofore or hereafter enacted. However, nothing herein nor in such lease-

purchase agreement is intended to nor shall this part or such lease-purchase agreement require the making or continuance of such appropriations nor shall any holder of bonds issued pursuant to this part ever have any right to compel the making or continuance of such appropriations.

(5) No pledge of said Osceola County gasoline tax funds as rentals under such lease-purchase agreement shall be made without the consent of Osceola County evidenced by a resolution duly adopted by the board of county commissioners of said county at a public hearing held pursuant to due notice thereof published at least once a week for 3 consecutive weeks before the hearing in a newspaper of general circulation in Osceola County. In addition to other provisions, the resolution shall provide that any excess of said pledged gasoline tax funds which is not required for debt service or reserves for such debt service for any bonds issued by said authority shall be returned annually to the department for distribution to Osceola County as provided by law. Before making any application for such pledge of gasoline tax funds, the authority shall present the plan of its proposed project to the Osceola County Planning and Zoning Commission for its comments and recommendations.

(6) The department shall have power to covenant in any lease-purchase agreement that it will pay all or any part of the cost of the operation, maintenance, repair, renewal, and replacement of the system and any part of the cost of completing the system to the extent that the proceeds of bonds issued therefor are insufficient from sources other than the revenues derived from the operation of the system and Osceola County

gasoline tax funds. The department may also agree to make such other payments from any moneys available to the commission or the county in connection with the construction or completion of the system as shall be deemed by the department to be fair and proper under any such covenants heretofore or hereafter entered into.

(7) The system shall be a part of the state road system and the department is hereby authorized, upon the request of the authority, to expend out of any funds available for the purpose such moneys and to use such of its engineering and other forces as may be necessary and desirable in the judgment of the department for the operation of the authority and for traffic surveys, borings, surveys, preparation of plans and specifications, estimates of cost, and other preliminary engineering and other studies; however, the aggregate amount of moneys expended for said purposes by the department shall not exceed the sum of $375,000.

348.9809 Department may be appointed agent of authority for construction.--The authority may appoint the department as its agent for the purpose of constructing improvements and extensions to the Osceola County Expressway System and for the completion thereof. In such event, the authority shall provide the department with complete copies of all documents, agreements, resolutions, contracts, and instruments relating thereto; shall request the department to do such construction work, including the planning, surveying, and actual construction of the completion, extensions, and improvements of the Osceola County Expressway System; and shall transfer to the credit of an

account of the department in the treasury of the state the necessary funds therefor, and the department shall thereupon be authorized, empowered, and directed to proceed with such construction and to use the funds for such purpose in the same manner that it is now authorized to use the funds otherwise provided by law for its use in construction of roads and bridges.

348.9811 Acquisition of lands and property.--

(1) For the purposes of this part, the Osceola County Expressway Authority may acquire private or public property and property rights, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation by eminent domain proceedings as the authority may deem necessary for any of the purposes of this part, including, but not limited to, any lands reasonably necessary for securing applicable permits, areas necessary for management of access, borrow pits, drainage ditches, water retention areas, rest areas, replacement access for landowners whose access is impaired due to the construction of a facility, and replacement rights-of-way for relocated rail and utility facilities; for existing, proposed, or anticipated transportation facilities on the Osceola County Expressway System or in a transportation corridor designated by the authority; or for the purposes of screening, relocation, removal, or disposal of junkyards and scrap metal processing facilities. The authority shall also have the power to condemn any material and property necessary for such purposes.

(2) The right of eminent domain conferred in this part shall be exercised by the authority in the manner provided by

law.

(3) When the authority acquires property for a transportation facility or in a transportation corridor, it is not subject to any liability imposed by chapter 376 or chapter 403 for preexisting soil or groundwater contamination due solely to its ownership. This section does not affect the rights or liabilities of any past or future owners of the acquired property, nor does it affect the liability of any governmental entity for the results of its actions which create or exacerbate a pollution source. The authority and the Department of Environmental Protection may enter into interagency agreements for the performance, funding, and reimbursement of the investigative and remedial acts necessary for property acquired by the authority.

348.9812 Cooperation with other units, boards, agencies, and individuals.--Express authority and power is hereby given and granted to any county, municipality, drainage district, road and bridge district, school district, or any other political subdivision, board, commission, or individual in or of the state to make and enter into with the authority contracts, leases, conveyances, partnerships, or other agreements within the provisions and purposes of this part. The authority is hereby expressly authorized to make and enter into contracts, leases, conveyances, partnerships, and other agreements with any political subdivision, agency, or instrumentality of the state and any and all federal agencies, corporations, and individuals for the purpose of carrying out the provisions of this part.

348.9813 Covenant of the state.--The state does hereby

pledge to and agrees with any person, firm, or corporation or federal or state agency subscribing to or acquiring the bonds to be issued by the authority for the purposes of this part that the state will not limit or alter the rights hereby vested in the authority and the department until all bonds at any time issued, together with the interest thereon, are fully paid and discharged insofar as the same affects the rights of the holders of bonds issued hereunder. The state does further pledge to and agree with the United States that in the event any federal agency shall construct or contribute any funds for the completion, extension, or improvement of the Osceola County Expressway System, or any part or portion thereof, the state will not alter or limit the rights and powers of the authority and the department in any manner which would be inconsistent with the continued maintenance and operation of the Osceola County Expressway System or the completion, extension, or improvement thereof or which would be inconsistent with the due performance of any agreements between the authority and any such federal agency. The authority and the department shall continue to have and may exercise all powers herein granted so long as the same shall be necessary or desirable for the carrying out of the purposes of this part and the purposes of the United States in the completion, extension, or improvement of the Osceola County Expressway System or any part or portion thereof.

348.9814 Exemption from taxation.--The effectuation of the authorized purposes of the authority created under this part is, shall, and will be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity,

and for the improvement of their health and living conditions and, since the authority will be performing essential governmental functions in effectuating such purposes, the authority shall not be required to pay any taxes or assessments of any kind or nature whatsoever upon any property acquired or used by it for such purposes or upon any rates, fees, rentals, receipts, income, or charges at any time received by it and the bonds issued by the authority, their transfer, and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation of any kind by the state or by any political subdivision or taxing agency or instrumentality thereof. The exemption granted by this section shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

348.9815 Eligibility for investments and security.--Any bonds or other obligations issued pursuant to this part shall be and constitute legal investments for banks, savings banks, trustees, executors, administrators, and all other fiduciaries and for all state, municipal, and other public funds and shall also be and constitute securities eligible for deposit as security for all state, municipal, or other public funds, notwithstanding the provisions of any other law or laws to the contrary.

348.9816 Pledges enforceable by bondholders.--It is the express intention of this part that any pledge by the department of rates, fees, revenues, Osceola County gasoline tax funds, or other funds, as rentals, to the authority, or any covenants or agreements relative thereto, may be enforceable in any court of

competent jurisdiction against the authority or directly against the department by any holder of bonds issued by the authority.

348.9817 This part complete and additional authority.--

(1) The powers conferred by this part shall be in addition and supplemental to the existing powers of the board and the department, and this part shall not be construed as repealing any of the provisions of any other law, general, special, or local, but to supersede such other laws in the exercise of the powers provided in this part and to provide a complete method for the exercise of the powers granted in this part. The extension and improvement of the Osceola County Expressway System and the issuance of bonds hereunder to finance all or part of the cost thereof may be accomplished upon compliance with the provisions of this part without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special, or local law, including, but not limited to, s. 215.821. No approval of any bonds issued under this part by the qualified electors or qualified electors who are freeholders in the state or in Osceola County or in any other political subdivision of the state shall be required for the issuance of such bonds pursuant to this part.

(2) This part shall not be deemed to repeal, rescind, or modify the Osceola County Charter. This part shall not be deemed to repeal, rescind, or modify any other law relating to the State Board of Administration, the Department of Transportation, or the Division of Bond Finance of the State Board of Administration but shall be deemed to and shall supersede such

other laws as are inconsistent with the provisions of this part, including, but not limited to, s. 215.821.

Section 20. Paragraph (b) of subsection (7) of section 373.036, Florida Statutes, is amended to read:

373.036 Florida water plan; district water management plans.--

(7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL REPORT.--

(b) The consolidated annual report shall contain the following elements, as appropriate to that water management district:

1. A district water management plan annual report or the annual work plan report allowed in subparagraph (2)(e)4.

2. The department-approved minimum flows and levels annual priority list and schedule required by s. 373.042(2).

3. The annual 5-year capital improvements plan required by s. 373.536(6)(a)3.

4. The alternative water supplies annual report required by s. 373.1961(2)(k).

5. The final annual 5-year water resource development work program required by s. 373.536(6)(a)4.

6. The Florida Forever Water Management District Work Plan annual report required by s. 373.199(7).

7. The mitigation donation annual report required by s. 373.414(1)(c)~~(b)~~2.

Section 21. Subsection (12) is added to section 373.406, Florida Statutes, to read:

373.406 Exemptions.--The following exemptions shall apply:

(12) Department of Transportation projects and activities described in s. 373.4146(1) are exempt from regulation under this part and from any rule, manual, or order adopted under this part.

Section 22. Paragraph (e) of subsection (6) and subsection (7) of section 373.4135, Florida Statutes, are amended to read:

373.4135 Mitigation banks and offsite regional mitigation.--

(6) An environmental creation, preservation, enhancement, or restoration project, including regional offsite mitigation areas, for which money is donated or paid as mitigation, that is sponsored by the department, a water management district, or a local government and provides mitigation for five or more applicants for permits under this part, or for 35 or more acres of adverse impacts, shall be established and operated under a memorandum of agreement. The memorandum of agreement shall be between the governmental entity proposing the mitigation project and the department or water management district, as appropriate. Such memorandum of agreement need not be adopted by rule. For the purposes of this subsection, one creation, preservation, enhancement, or restoration project shall mean one or more parcels of land with similar ecological communities that are intended to be created, preserved, enhanced, or restored under a common scheme.

(e) Projects governed by this subsection, except for projects established pursuant to subsection (7), shall be subject to the provisions of s. 373.414(1)(c) ~~(b)~~1.

(7) The department, water management districts, and local governments may elect to establish and manage mitigation sites, including regional offsite mitigation areas, or contract with permitted mitigation banks, to provide mitigation options for private single-family lots or homeowners. The department, water management districts, and local governments shall provide a written notice of their election under this subsection by United States mail to those individuals who have requested, in writing, to receive such notice. The use of mitigation options established under this subsection are not subject to the full-cost-accounting provision of s. 373.414(1)(c) ~~(b)~~1. To use a mitigation option established under this subsection, the applicant for a permit under this part must be a private, single-family lot or homeowner, and the land upon which the adverse impact is located must be intended for use as a single-family residence by the current owner. The applicant must not be a corporation, partnership, or other business entity. However, the provisions of this subsection shall not apply to other entities that establish offsite regional mitigation as defined in this section and s. 373.403.

Section 23. Paragraph (d) of subsection (6) of section 373.4136, Florida Statutes, is amended to read:

373.4136 Establishment and operation of mitigation banks.--

(6) MITIGATION SERVICE AREA.--The department or water management district shall establish a mitigation service area for each mitigation bank permit. The department or water management district shall notify and consider comments received

on the proposed mitigation service area from each local government within the proposed mitigation service area. Except as provided herein, mitigation credits may be withdrawn and used only to offset adverse impacts in the mitigation service area. The boundaries of the mitigation service area shall depend upon the geographic area where the mitigation bank could reasonably be expected to offset adverse impacts. Mitigation service areas may overlap, and mitigation service areas for two or more mitigation banks may be approved for a regional watershed.

(d) If the requirements in s. 373.414(1)(c) ~~(b)~~ and (8) are met, the following projects or activities regulated under this part shall be eligible to use a mitigation bank, regardless of whether they are located within the mitigation service area:

1. Projects with adverse impacts partially located within the mitigation service area.

2. Linear projects, such as roadways, transmission lines, distribution lines, pipelines, or railways.

3. Projects with total adverse impacts of less than 1 acre in size.

Section 24. Paragraphs (b) and (c) of subsection (1) of section 373.414, Florida Statutes, are redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added to that subsection to read:

373.414 Additional criteria for activities in surface waters and wetlands.--

(1) As part of an applicant's demonstration that an activity regulated under this part will not be harmful to the water resources or will not be inconsistent with the overall

objectives of the district, the governing board or the department shall require the applicant to provide reasonable assurance that state water quality standards applicable to waters as defined in s. 403.031(13) will not be violated and reasonable assurance that such activity in, on, or over surface waters or wetlands, as delineated in s. 373.421(1), is not contrary to the public interest. However, if such an activity significantly degrades or is within an Outstanding Florida Water, as provided by department rule, the applicant must provide reasonable assurance that the proposed activity will be clearly in the public interest.

(b) Department of Transportation projects and activities described in s. 373.4146(1) are exempt from the public-interest criteria of this subsection.

Section 25. Subsection (7) is added to section 373.4145, Florida Statutes, to read:

373.4145 Interim part IV permitting program for the Northwest Florida Water Management District.--

(7) Department of Transportation projects and activities described in s. 373.4146(1) are exempt from the provisions of this section and from any rules, manuals, or orders adopted under this section.

Section 26. Section 373.4146, Florida Statutes, is created to read:

373.4146 Permitting exemptions for Department of Transportation projects; establishment of permit thresholds.--

(1) The following state transportation projects and activities are exempt from regulation under this part and from

any rule, manual, or order adopted under this part:

(a) Resurfacing, restoration, and rehabilitation work on existing highways to extend the service life or enhance highway safety, including, but not limited to, widening existing lanes, improving shoulders, and extending existing culverts or drainage structures to meet current highway safety standards, but not including increasing the number of through-travel lanes.

(b) In-kind bridge replacement with the same number of through-travel lanes designed to current safety standards, and associated approach roadway work.

(c) Intersection improvements, including the addition or extension of turn lanes and median crossings.

(d) Addition of pedestrian and bicycle facilities to existing highways.

(2) The following provisions apply to all state transportation projects regulated under this part:

(a) As long as the stormwater discharge meets water quality standards of the receiving waters, the Department of Transportation is not required to determine or be limited to the existing discharge rate for discharges to tidally controlled bodies of water for any state transportation project as long as the discharge rate post project does not exceed the preproject discharge rate by 30 percent.

(b) Any state transportation project that has undergone review pursuant to a process approved under 23 U.S.C. s. 6002 will be deemed to have satisfied the cumulative impact review required pursuant to s. 373.414(8)(a).

(c) State transportation projects are exempt from project

size acreage thresholds for general permits under this part.

(d) State transportation projects with less than 5 acres of wetland impacts may obtain general permits under this part.

(e) Stormwater treatment facilities for state transportation projects shall not be subject to minimum width or acreage restrictions.

(3) By January 1, 2007, the department, the water management districts, and the Department of Transportation shall develop a memorandum of understanding governing the use, and the granting of such use, of sovereign submerged or other state-owned lands pursuant to chapter 253 or chapter 258 for state transportation projects. The memorandum of understanding shall address engineering techniques to minimize the project's environmental impacts, mitigation of unavoidable environmental impacts, and other related issues.

(4) By July 1, 2007, the department, the water management districts, and the Department of Transportation shall jointly develop a memorandum of understanding describing a method for determining the seasonal high groundwater table elevation to be used by the department and the water management districts when permitting state transportation projects under this part.

(5) By July 1, 2008, the department, the water management districts, and the Department of Transportation shall research and identify the specific constituents of highway stormwater runoff and shall jointly develop a memorandum of understanding containing best management practices to treat or minimize these identified constituents. These best management practices shall be deemed sufficient to satisfy water treatment requirements for

permits required by this part.

Section 27. Paragraph (d) of subsection (2) of section 348.0003, Florida Statutes, is amended to read:

348.0003 Expressway authority; formation; membership.--

(2) The governing body of an authority shall consist of not fewer than five nor more than nine voting members. The district secretary of the affected department district shall serve as a nonvoting member of the governing body of each authority located within the district. Each member of the governing body must at all times during his or her term of office be a permanent resident of the county which he or she is appointed to represent.

(d) Notwithstanding any provision to the contrary in this subsection, in any county as defined in s. 125.011(1), the governing body of an authority shall consist of seven voting ~~up to 13~~ members and two nonvoting members, and the following provisions of this paragraph shall apply specifically to such authority. Two ~~Except for the district secretary of the department, the members must be residents of the county. Seven~~ voting members shall be county commissioners appointed by the chair of the governing body of the county. One voting member shall be a mayor of a municipality within the county at all times while serving on the authority and shall be appointed by the Miami-Dade County League of Cities. Four ~~At the discretion of the governing body of the county, up to two of the members appointed by the governing body of the county may be elected officials residing in the county. Five~~ voting members of the authority shall be appointed by the Governor and must be

residents of the county or municipality at all times while serving. The Governor's appointees shall not be elected or appointed officials or employees of the county or of a municipality within the county. ~~One member shall be~~ The district secretary of the department serving in the district that contains such county shall be a nonvoting member of the authority. One member shall be the chair of the Miami-Dade legislative delegation, or another member of the delegation appointed by the chair, and shall be a nonvoting member of the authority. ~~This member shall be an ex officio voting member of the authority. If the governing board of an authority includes any member originally appointed by the governing body of the county as a nonvoting member, when the term of such member expires, that member shall be replaced by a member appointed by the Governor until the governing body of the authority is composed of seven members appointed by the governing body of the county and five members appointed by the Governor.~~ The qualifications, terms of office, and obligations and rights of members of the authority shall be determined by resolution or ordinance of the governing body of the county in a manner that is consistent with subsections (3) and (4).

Section 28. Paragraph (f) of subsection (2) and paragraphs (a) and (h) of subsection (9) of section 348.0004, Florida Statutes, are amended to read:

348.0004 Purposes and powers.--

(2) Each authority may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of

its purposes, including, but not limited to, the following rights and powers:

(f)1. To fix, alter, charge, establish, and collect tolls, rates, fees, rentals, and other charges for the services and facilities system, which tolls, rates, fees, rentals, and other charges must always be sufficient to comply with any covenants made with the holders of any bonds issued pursuant to the Florida Expressway Authority Act. However, such right and power may be assigned or delegated by the authority to the department. Notwithstanding s. 338.165 or any other provision of law to the contrary, in any county as defined in s. 125.011(1), to the extent surplus revenues exist, they may be used for purposes enumerated in subsection (7), provided the expenditures are consistent with the metropolitan planning organization's adopted long-range plan. Notwithstanding any other provision of law to the contrary, but subject to any contractual requirements contained in documents securing any outstanding indebtedness payable from tolls, in any county as defined in s. 125.011(1), the board of county commissioners may, by ordinance adopted on or before September 30, 1999, alter or abolish existing tolls and currently approved increases thereto if the board provides a local source of funding to the county expressway system for transportation in an amount sufficient to replace revenues necessary to meet bond obligations secured by such tolls and increases.

2. Prior to raising tolls, whether paid by cash or electronic toll collection, an expressway authority in any county as defined in s. 125.011(1) shall publish a notice of the

intent to raise tolls in a newspaper of general circulation, as defined in s. 97.021(18), in the county. The notice shall provide the amount of increase to be implemented for cash payment, electronic payment, or both, as applicable. The notice also shall provide a postal address, an electronic mail or Internet address, and a local telephone number for the purpose of receiving public comment on the issue of the toll increase. The notice shall be published two times, at least 7 days apart, with the first publication occurring not more than 90 days prior to the proposed effective date of the toll increase and the second publication occurring not fewer than 60 days prior to the proposed effective date of the toll increase. The provisions of this subparagraph shall not apply to any change in the toll rate for the use of any portion of the expressway system that has been approved by this authority prior to July 1, 2006.

(9) The Legislature declares that there is a public need for rapid construction of safe and efficient transportation facilities for travel within the state and that it is in the public's interest to provide for public-private partnership agreements to effectuate the construction of additional safe, convenient, and economical transportation facilities.

(a) Notwithstanding any other provision of law to the contrary ~~the Florida Expressway Authority Act~~, any expressway authority, transportation authority, bridge authority, or toll authority established by statute or under this part may receive or solicit proposals and enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of expressway authority transportation

facilities or new transportation facilities within the jurisdiction of the expressway authority. An expressway authority is authorized to adopt rules to implement this subsection and shall, by rule, establish an application fee for the submission of unsolicited proposals under this subsection. The fee must be sufficient to pay the costs of evaluating the proposals. An expressway authority may engage private consultants to assist in the evaluation. Before approval, an expressway authority must determine that a proposed project:

1. Is in the public's best interest.

2. Would not require state funds to be used unless the project is on or provides increased mobility on the State Highway System.

3. Would have adequate safeguards to ensure that no additional costs or service disruptions would be realized by the traveling public and citizens of the state in the event of default or the cancellation of the agreement by the expressway authority.

(h) Except as herein provided, this subsection is not intended to amend existing laws by granting additional powers to or further restricting the governmental entities from regulating and entering into cooperative arrangements with the private sector for the planning, construction, and operation of transportation facilities. Use of the powers granted in this subsection by a statutorily created expressway authority, transportation authority, bridge authority, or toll authority, except one statutorily created under this part, shall not be

subject to any of the requirements of this part except those contained in this subsection.

Section 29. Subsection (6) is added to section 348.754, Florida Statutes, to read:

348.754 Purposes and powers.--

(6)(a) Notwithstanding s. 255.05, the Orlando-Orange County Expressway Authority may waive payment and performance bonds on construction contracts for the construction of a public building, for the prosecution and completion of a public work, or for repairs on a public building or public work that has a cost of $500,000 or less and when the project is awarded pursuant to an economic development program for the encouragement of local small businesses that has been adopted by the governing body of the Orlando-Orange County Expressway Authority pursuant to a resolution or policy.

(b) The authority's adopted criteria for participation in the economic development program for local small businesses requires that a participant:

1. Be an independent business.

2. Be principally domiciled in the Orange County Standard Metropolitan Statistical Area.

3. Employ 25 or fewer full-time employees.

4. Have gross annual sales averaging $3 million or less over the immediately preceding 3 calendar years with regard to any construction element of the program.

5. Be accepted as a participant in the Orlando-Orange County Expressway Authority's microcontracts program or such other small business program as may be hereinafter enacted by

the Orlando-Orange County Expressway Authority.

6. Participate in an educational curriculum or technical assistance program for business development that will assist the small business in becoming eligible for bonding.

(c) The authority's adopted procedures for waiving payment and performance bonds on projects with values not less than $200,000 and not exceeding $500,000 shall provide that payment and performance bonds may only be waived on projects that have been set aside to be competitively bid on by participants in an economic development program for local small businesses. The authority's executive director or his or her designee shall determine whether specific construction projects are suitable for:

1. Bidding under the authority's microcontracts program by registered local small businesses; and

2. Waiver of the payment and performance bond.

The decision of the authority's executive director or deputy executive director to waive the payment and performance bond shall be based upon his or her investigation and conclusion that there exists sufficient competition so that the authority receives a fair price and does not undertake any unusual risk with respect to such project.

(d) For any contract for which a payment and performance bond has been waived pursuant to the authority set forth in this section, the Orlando-Orange County Expressway Authority shall pay all persons defined in s. 713.01 who furnish labor, services, or materials for the prosecution of the work provided

for in the contract to the same extent and upon the same conditions that a surety on the payment bond under s. 255.05 would have been obligated to pay such persons if the payment and performance bond had not been waived. The authority shall record notice of this obligation in the manner and location that surety bonds are recorded. The notice shall include the information describing the contract that s. 255.05(1) requires be stated on the front page of the bond. Notwithstanding that s. 255.05(9) generally applies when a performance and payment bond is required, s. 255.05(9) shall apply under this subsection to any contract on which performance or payment bonds are waived and any claim to payment under this subsection shall be treated as a contract claim pursuant to s. 255.05(9).

(e) A small business that has been the successful bidder on six projects for which the payment and performance bond was waived by the authority pursuant to paragraph (a) shall be ineligible to bid on additional projects for which the payment and performance bond is to be waived. The local small business may continue to participate in other elements of the economic development program for local small businesses as long as it is eligible.

(f) The authority shall conduct bond eligibility training for businesses qualifying for bond waiver under this subsection to encourage and promote bond eligibility for such businesses.

(g) The authority shall prepare a biennial report on the activities undertaken pursuant to this subsection to be submitted to the Orange County legislative delegation. The initial report shall be due December 31, 2008.

Section 30. Subsection (1) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.--It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(1) ~~CHARTER~~ COUNTY TRANSPORTATION ~~TRANSIT~~ SYSTEM SURTAX.--

(a) Each ~~charter~~ county ~~which adopted a charter prior to January 1, 1984, and each county the government of which is consolidated with that of one or more municipalities,~~ may:

1. Levy a discretionary sales surtax, subject to approval by a majority vote of the electorate of the county; or

2. Levy a discretionary sales surtax pursuant to this subsection by a supermajority affirmative vote of the total membership of its governing body ~~by a charter amendment approved by a majority vote of the electorate of the county~~.

(b) The rate shall be up to 1 percent.

(c) If the proposal to adopt a discretionary sales surtax is to be adopted by a referendum as provided in this subsection,

such proposal ~~and to create a trust fund within the county accounts~~ shall be placed on the ballot in accordance with law at a time to be set at the discretion of the governing body of the county.

(d) Proceeds from the surtax shall be distributed to the county and to each municipality within the county in which the surtax is collected, according to:

1. A separate interlocal agreement between the county governing body and the governing body of any municipality within the county; or

2. If there is no interlocal agreement between the county governing body and the governing body of any municipality within the county, the proceeds shall be distributed according to an apportionment factor for each eligible local government as specified in this subparagraph.

a. The apportionment factor for an eligible county shall be composed of two equally weighted portions as follows:

(I) Each eligible county's population in the unincorporated areas of the county as a percentage of the total county population as determined pursuant to s. 186.901.

(II) Each eligible county's percentage of centerline miles derived from the combined total number of centerline miles owned and maintained by the county and each municipality within the county as annually reported in the City/County Mileage Report promulgated by the Transportation Statistics Office within the Department of Transportation.

b. The apportionment factor for an eligible municipality shall be composed of two equally weighted portions as follows:

(I) Each eligible municipality's population as a percentage of the total county population as determined pursuant to s. 186.901.

(II) Each eligible municipality's percentage of centerline miles derived from the combined total number of centerline miles owned and maintained by the county and each municipality within the county as annually reported in the City/County Mileage Report promulgated by the Transportation Statistics Office within the Department of Transportation.

(e) A charter county that has adopted a surtax pursuant to this subsection by referendum as of July 1, 2006, shall not be required to distribute surtax proceeds pursuant to paragraph (d) but shall follow the procedures established in paragraph (f). Each charter county that adopted a charter prior to January 1, 1984, and each county the government of which is consolidated with that of one or more municipalities, that adopts a surtax pursuant to this subsection by referendum after July 1, 2006, shall not be required to distribute surtax proceeds pursuant to paragraph (d) but shall follow the procedures established in paragraph (f). Pursuant to an interlocal agreement entered into pursuant to chapter 163, the governing body of the charter county may distribute proceeds from the tax to a municipality, or an expressway or transportation authority created by law, to be expended for the purposes authorized by paragraph (f). Interlocal agreements entered into as of July 1, 2006, pursuant to chapter 163 by the governing body of the county to distribute proceeds from the tax to a municipality or an expressway or transportation authority created by law shall not be affected by

the changes made to this subsection by this act effective July 1, 2006.

(f) Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the governing body of the municipality or the county ~~commission~~ deems appropriate:

1. Deposited by the governing body of the municipality or the county in the trust fund and shall be used for the purposes of development, construction, equipment, maintenance, operation, supportive services, including a ~~countywide~~ bus system, and related costs of a fixed guideway rapid transit system.~~;~~

2. Remitted by the governing body of the municipality or county to an expressway or transportation authority created by law to be used, at the discretion of such authority, for the development, construction, operation, or maintenance of roads, bicycle and pedestrian facilities, or bridges in the county or municipality, for the operation and maintenance of a bus system, for the payment of principal and interest on existing bonds issued for the construction of such roads, bicycle or pedestrian facilities, or bridges, and, upon approval by the governing body of the municipality or county ~~commission~~, such proceeds may be pledged for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges.~~;~~

~~3. Used by the charter county for the development, construction, operation, and maintenance of roads and bridges in the county; for the expansion, operation, and maintenance of bus and fixed guideway systems; and for the payment of principal and interest on bonds issued for the construction of fixed guideway~~

~~rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses; and~~

3.~~4.~~ Used by the governing body of the municipality or ~~charter~~ county for the planning, development, construction, operation, and maintenance of roads, bicycle and pedestrian facilities, and bridges in the county; for the planning, development, expansion, operation, and maintenance of bus and fixed guideway systems; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, bicycle and pedestrian facilities, or bridges; and such proceeds may be pledged by the governing body of the municipality or county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, bicycle and pedestrian facilities, or bridges. ~~Pursuant to an interlocal agreement entered into pursuant to chapter 163, the governing body of the charter county may distribute proceeds from the tax to a municipality, or an expressway or transportation authority created by law to be expended for the purpose authorized by this paragraph.~~

4. Used by the county or municipality to fund regionally significant transportation projects identified in a regional transportation plan developed in accordance with s. 339.155(5) or to provide matching funds for the Transportation Regional

Incentive Program in accordance with s. 339.2819 or the New Starts Transit Program as provided in s. 341.051.

5. Used by the county or municipality to fund projects identified in a capital improvements element of a comprehensive plan that has been determined to be in compliance with part II of chapter 163 or to implement a long-term concurrency management system adopted by a local government in accordance with s. 163.3177(3) or (9).

Section 31. Department of Transportation study of transportation facilities providing access to pari-mutuel facilities and Indian reservations; report and recommendations.--

(1) The Department of Transportation is directed to conduct a study of the impacts that slot machine gaming at pari-mutuel facilities and on Indian reservation lands is having on public roads and other transportation facilities, regarding traffic congestion and other mobility issues, facility maintenance and repair costs, emergency evacuation readiness, and costs of potential future widening or other improvements, and of other impacts on the motoring, nongaming public.

(2) The study shall include, but is not limited to, the following information:

(a) A listing, description, and functional classification of the access roads to and from pari-mutuel facilities and Indian reservations that conduct slot machine gaming in the state.

(b) An identification of the access roads identified under paragraph (a) that are either scheduled for improvements within

the Department of Transportation's 5-year work program or are listed on the 20-year, long-range transportation plan of the department or a metropolitan planning organization.

(c) The most recent traffic counts on the access roads and projected future usage, as well as any projections of impacts on secondary, feeder, or connector roads, interstate highway exit and entrance ramps, or other area transportation facilities.

(d) The safety and maintenance ratings of each access road and a detailed review of impacts on the ability of local and state emergency management agencies to provide emergency or evacuation services.

(e) The estimated infrastructure costs to maintain, improve, or widen these access roads based on future projected needs.

(f) The feasibility of implementing tolls on these access roads or, if already tolled, raising the toll to offset and mitigate the impacts of traffic generated by pari-mutuel facility and Indian reservation slot machine gaming activities on nontribal communities in the state and to finance projected future improvements to the access roads.

(3) The department shall present its findings and recommendations in a report to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 15, 2007. The report may include any department recommendations for proposed legislation.

Section 32. Beginning in fiscal year 2006-2007 and in every year thereafter, a sum in the amount of $400 million in recurring general revenue, adjusted by the percentage change in

the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30 and rounded to the nearest dollar, is hereby appropriated to the Department of Transportation and transferred to the State Transportation Trust Fund for the purpose of financing fixed capital outlay projects for arterial highway construction.

Section 33. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **7077**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative Glorioso offered the following:

Amendment

Remove line 710 and insert:

of the original approved ~~total~~ operating budget as defined in s. 216.181(1) of the turnpike enterprise. Funds

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **7077**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative Glorioso offered the following:

Amendment (with title amendment)

Remove lines 2357 through 2365

(a) The governing authority in each ~~charter~~ county ~~which adopted a charter prior to January 1, 1984, and each county the government of which is consolidated with that of one or more municipalities,~~ may levy a discretionary sales surtax pursuant to ordinance enacted by a majority of the members of the county governing authority and~~,~~ subject to approval by a majority vote of the electorate of the county ~~or by a charter amendment approved by a majority vote of the electorate of the county~~.

========== T I T L E A M E N D M E N T ==========

Remove lines 200 and 201 and insert:

counties to levy a discretionary sales surtax upon approval by the governing body and the electorate of

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **7077**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	_____	

Council/Committee hearing bill: Transportation & Economic Development Appropriations Committee

Representative Glorioso offered the following:

Amendment (with title amendment)

Remove lines 2534 through 2543

========== T I T L E A M E N D M E N T ==========

Remove line(s) 216 through 218 and insert:

the Governor and the Legislature; providing an effective

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7081 PCB GO 06-25 Administrative Procedures
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Brown	Williamson
1) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
2) State Administration Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill increases the Department of State's administrative responsibilities regarding the Florida Administrative Code and Florida Administrative Weekly website, requiring that the site contain several new features. The Department of State has estimated its costs of implementing the website provisions at $450,000 over a three-year period.

The bill modifies the Administrative Procedure Act as follows:

- Provides for a continuous review of agency rulemaking;
- Revises agency rulemaking duties regarding Notices of Change and forms incorporated by reference;
- Expands access to the Florida Equal Access to Justice Act to certain petitioners, by expanding the definition of "small business party" to include an individual whose net worth is less than $2M;
- Revises provisions relating to the timing and substance of petitions for administrative hearings;
- Requires the agency to make an explicit ruling on each exception filed by any party following the submission of a recommended order; and
- Requires the Division of Administrative Hearings and agencies to file certain reports with the Administration Commission and the Joint Administrative Procedures Committee.

The bill grants rulemaking authority to the Administration Commission for prescribing the form and substantive provisions of a protest bond.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires the Department of State to publish on an Internet website the Florida Administrative Weekly (FAW) accessible free of charge to the public, and to continue publishing the FAW in print format.

The bill increases the rulemaking authority of the Administration Commission for the limited purpose of prescribing the form and substantive provisions of bid-protest bonds.

B. EFFECT OF PROPOSED CHANGES:

Administrative Procedure Act

Background

The Administrative Procedure Act (APA)[1] allows persons substantially affected by the preliminary decisions of administrative agencies to challenge those decisions. The Division of Administrative Hearings (DOAH), which consists of an independent group of administrative law judges, conducts hearings under chapter 120, F.S., when certain agency decisions[2] are challenged by substantially affected persons.[3]

Current law provides that a person substantially affected by a rule or proposed rule may file a petition seeking an administrative determination of the invalidity of a rule or proposed rule on the ground that the rule is an invalid exercise of delegated legislative authority. It also provides a mechanism for a substantially affected person to seek an administrative determination that an agency statement of generally applicable policy should have been adopted as a rule.[4]

A party wishing to challenge an agency determination of his or her substantial interests must file a petition for hearing with the agency. The agency must then request, from DOAH, an administrative hearing within 15 days. The APA also provides notice and pleading requirements, and the time parameters within which a final order must be completed.[5]

Current law requires the Administration Commission[6] to enact uniform rules of procedure governing DOAH. These uniform rules of procedure are analogous to the Florida Rules of Civil Procedure, used by the judicial branch. Legislation passed in 1998[7] clarified that the uniform rules of procedure for the filing of all petitions for administrative hearing under ss. 120.569 or 120.57, F.S., must include:

- The identification of the petitioner;
- A statement of when and how the petitioner received notice of the agency's action or proposed action;
- An explanation of how the petitioner's substantial interests are or will be affected by the action or proposed action;
- A statement of all material facts disputed by the petitioner or a statement that there are no disputed facts;

---

[1] Ch. 120, F.S.
[2] For example, rules and determinations of a party's substantial interest.
[3] DOAH proceedings are conducted like nonjury trials and are governed by chapter 120, F.S.
[4] Sec. 120.56, F.S.
[5] Sec. 120.569, F.S.
[6] The Governor and the Cabinet make up the members of the Administration Commission. Sec. 14.202, F.S.
[7] Ch. 1998-200, Laws of Florida, sec. 3.

- A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes;[8] and
- A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the agency to take with respect to the proposed action.[9]

There is a Joint Administrative Procedures Committee (JAPC), within the Legislature, made up of six members; three members of the House of Representatives and three members of the Senate. JAPC undertakes and maintains a systematic and continuous review of the statutes authorizing agencies to adopt rules. It makes recommendations to the appropriate standing committees of the Legislature regarding delegated legislative authority to adopt rules.[10]

Effect of Bill

Duties of JAPC

The bill requires JAPC to maintain a continuous review of statutes that authorize agencies to adopt rules and to make recommendations to appropriate standing committees. It removes the requirement that the committee "undertake a systematic review" of the statues. According to JAPC, it is a more efficient use of committee resources to review statutes in the course of the rule review process.

Agency Rulemaking

The bill locates all important rulemaking timeframes and deadlines in one section of the APA for improved accessibility. The bill also clarifies that an agency must file a Notice of Change after a final rulemaking hearing, if non-technical changes are made, and that the notice must be published in the FAW.

Appeal of Administrative Determinations

The bill further provides that the filing of a petition for administrative determination of a proposed rule must toll the 90-day period during which a rule must be filed for adoption until 30 days after rendition of the final order, or until any judicial review of the final order is complete. Unless the decision of the administrative law judge is reversed on appeal, the proposed rule or provision of a proposed rule declared invalid will not be adopted. It clarifies that the term "administrative determination" does not include subsequent judicial review.

Petitions for Administrative Hearing

The bill grants rulemaking authority to the Administration Commission in order to create a separate set of pleading requirements for those hearings filed by the respondent in an agency enforcement or disciplinary action. Uniform rules for this type of request require:

- The name, address and telephone number of the party making the request and the name, address and telephone number of the party's counsel or qualified representative upon whom service of pleadings and other papers will be made;
- A statement that the respondent is requesting an administrative hearing and disputes the material facts alleged by the petitioner, in which case the respondent must identify those material facts that are in dispute, or that the respondent is requesting an administrative hearing and does not dispute the material facts alleged by the petitioner; and

[8] The underlined text was not part of the 1998 amendment, but was inserted by chapter 2003-94, Laws of Florida, sec. 2.
[9] Sec. 120.54(5)(b)4., F.S.
[10] Sec. 11.60, F.S.

- A reference by file number to the administrative complaint that the party has received from the agency, and the date on which the agency pleading was received.

The pleading requirements are codified in the Florida Administrative Code at Uniform Rule 28-107.004(3), F.A.C., which was promulgated *before* the 1998 legislative amendment. The rulemaking authority granted to the Administration Commission serves to resolve the confusion between rule and statute.

Equitable Tolling

The bill extends the deadline for filing a petition, if the petitioner has:

- Been misled or lulled into action;
- In some extraordinary way been prevented from asserting his or her rights; or
- Timely asserted his or her rights mistakenly in the wrong forum.

As reported by JAPC, these changes address concerns expressed in recent judicial decisions and by the administrative law judges and practitioners.

Bid Protest Bonds

The bill provides rulemaking authority to the Administration Commission for the purpose of prescribing the form and substantive provisions of a bond required pursuant to a bid protest. According to JAPC, the Administration Commission already has adopted such form; however, the commission did not have proper rulemaking authority. This change merely puts the commission's rule in compliance with the Florida Statutes.

Current law requires an agency to include in its notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase the following statement: "Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes." The bill requires that the notice also state that "failure to post the bond or other security required by law within the time allowed for filing a bond" constitutes a waiver of proceedings under the APA.

Final Orders

The bill provides additional requirements for final orders issued after a DOAH hearing under s. 120.57(1), F.S. The bill requires the agency to make an explicit ruling on each exception filed by any party after the recommended order is submitted by DOAH. The agency must report to DOAH its exceptions to the recommended order, and file a copy of the final order with DOAH.[11]

Agency and DOAH Reporting

The bill requires DOAH and agencies to file certain reports with the Administration Commission and JAPC. DOAH and agencies must issue recommendations regarding the types of cases that should be conducted by the summary hearing process in s. 120.574, F.S. DOAH must report on agency compliance with the requirement to file final orders and exceptions with the division within 15 days of issuance.

The bill requires each agency to file its report of the agency's formal rule review with JAPC in addition to the President of the Senate and the Speaker of the House of Representatives.[12] As with DOAH, the report must include recommendations regarding the types of cases that should be conducted by the summary hearing process.

[11] Sec. 120.57(1)(m), F.S.
[12] See s. 120.65(10), F.S.

Equal Access to Justice Act

The bill expands access to the Florida Equal Access to Justice Act, which allows certain small business owners to recover attorneys' fees when the agency action against the business entity is deemed not "substantially justified." The bill expands the definition of "small business party" to include individuals with a net worth of less than $2M, when the agency makes a claim against that individual's license rather than a claim against the business entity. This change appears to address *Daniels v. Fla. Dep't of Health*, SC 04-230 (Fla. 2005), in which the sole proprietor of an S-Corporation was deemed not a small business party because the agency's claim was made against the owner's individual license rather than against her corporate entity.[13]

Florida Administrative Weekly and Florida Administrative Code

Background

Current law requires the Department of State (DOS) to publish rulemaking and public meetings notices, and various other materials filed by the state's administrative agencies, in the *Florida Administrative Weekly* (FAW).[14] DOS contracts with LexisNexis Matthew Bender for publication of the FAW in a printed format.[15] The FAW is published on Fridays and distributed for free to administrative agencies, courts, libraries, law schools, and legislative offices. The FAW has approximately 369 paid subscribers.[16] In addition to the paper version, DOS also posts copies of the FAW on its Internet website accessible to the public free of charge.

DOS is required to publish the Florida Administrative Code (FAC), which contains all rules adopted by agencies, together with references to rulemaking authority and history notes. The FAC must be supplemented at least monthly.[17] DOS also contracts with LexisNexis Matthew Bender for the printing of the FAC.

Current law creates the Publication Revolving Trust Fund, and specifies that all fees and moneys collected by DOS under the Administrative Procedure Act (APA) be deposited in the fund for the purpose of paying for the publication of the FAC and FAW, and for associated costs incurred by DOS in administering APA requirements. Unencumbered balances at the beginning of each fiscal year, which exceed $300,000, are transferred to the General Revenue Fund.[18]

DOS is authorized to: (a) make subscriptions of the FAW available for a price computed as a pro rata share of 50 percent of the costs related to the publication of the FAW; and (b) charge agencies using the FAW a space rate (line charge) computed to cover a pro rata share of 50 percent of the costs related to publication of the FAW.[19] Subscription fees charged to FAW subscribers are retained by the publisher as compensation for printing the FAW. DOS does not receive royalties from FAW subscriptions.

Internet Publication Pilot Project

---

[13] Circuit appeals courts previously split on allowing fees under the Equal Access to Justice Act for petitioners in this situation. The 1st and 3rd DCA denied such claims while recognizing the unfairness of the result; the 4th DCA allowed the fees.

[14] According to DOS, approximately 600 entities publish notices in the FAW. These entities include state agencies, other units of state and local governments, and nongovernmental entities. Email from Dep't. of State, Feb. 9, 2006.

[15] *Report on Internet Noticing of the Florida Administrative Weekly*, Florida Joint Administrative Procedures Committee, October 2003, pp. 2-3.

[16] Telephone conversation with Department of State, Administrative Code and Weekly Unit, February 10, 2006. DOS indicated information was based on a recent report from FAW publisher.

[17] Sec. 120.55(1)(a), F.S.

[18] Sec. 120.55(5), F.S.

[19] Sec. 120.55(1), F.S.

In 2001, the Legislature authorized the Department of Environmental Protection (DEP) and the State Technology Office (STO) to establish an Internet publication pilot project for the purpose of determining the cost-effectiveness of publishing administrative notices on the Internet, rather than in the FAW, and to submit a report containing findings regarding the cost-effectiveness of Internet publication.[20] The report indicated that DEP paid $44,179 for FAW line charges during calendar year 2001 and would have paid approximately $32,100 for FAW line charges during calendar year 2002 if Internet publication had not been permitted. Nonrecurring costs to establish Internet publication were $10,200 to develop the computer software application, and $20,000 to program the e-mail registration service enhancement. The report indicated that the computer software application may be shared with other agencies at no cost and recommended that the Legislature permit all agencies to elect Internet publication in lieu of publication in the paper version of the FAW, given the potential for substantial agency savings.[21]

2003 Interim Study on FAW Internet Noticing

During the 2003 Legislative Interim, JAPC studied the feasibility of Internet noticing for all state agencies and other entities that advertise in the FAW.[22] In October 2003, the results were published in the "Report on Internet Noticing of the Florida Administrative Weekly." The report recommended publication of the FAW on a centralized website managed by DOS. Further, it was recommended that DOS continue to collect the space rate charge to fund its functions related to publication of the FAW and FAC.

Effect of Bill

The bill requires DOS, effective December 31, 2007, to publish electronically the FAW on an Internet website managed by the department, which will serve as the official Internet website for such publication. The website is free to the public and must allow users to:

- Search for notices by type, publication date, rule number, word, subject, or agency.
- Search a database that makes available all notices published on the website for a period of at least five years.
- Subscribe to an automated e-mail notification of selected notices.
- View agency forms incorporated by reference in proposed rules.

The bill requires DOS to continue to publish the printed version of the FAW and to make copies available on an annual subscription basis.

The bill:

- Requires DOS to review agency notices for compliance with format and numbering requirements before publication on the FAW Internet website.
- Extends the DEP Internet Publication Pilot Project from its current termination date of July 1, 2006, to December 31, 2007, when Internet publication of the FAW is required to begin.
- Requires DOS to make training courses available to assist agencies in the transition to publication on the FAW Internet website.

The bill removes current requirements that the annual subscription price and the space rate be computed to cover only costs related to the FAW. Instead, the space rate that may be charged is to cover the costs related to the FAW and the FAC, and no exact basis for determining an annual subscription price for the printed FAW is specified. It also amends current law to provide that the trust fund must fund the costs incurred by DOS in carrying out the APA.

---

[20] Ch. 2001-278, L.O.F.; s. 120.551, F.S.

[21] *Joint Report and Recommendations of the Department of Environmental Protection, The State Technology Office, and The Department of State on the Internet Publication Pilot Project under Sec. 120.551, F.S.*, Jan. 31, 2003.

[22] This study included conducting surveys and consulting with DOS, DEP, STO, and an independent technology expert to determine specific technology requirements and estimates of potential costs.

The bill provides that agency forms incorporated by reference into a rule noticed pursuant to s. 120.55(1)(a), F.S., after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated. It requires the FAW to contain: (1) the text of all proposed rules, rather than permitting a reference to that text in a prior edition of the FAW; and (2) a cumulative list of all rules that have been proposed, but not filed for adoption. The bill requires an agency, upon request, to provide copies of its rules with citations to, "the grant of rulemaking authority and the specific law implemented for each rule." It also requires DOS to maintain a permanent record of all notices published in the FAW.

The bill does not preclude publication of FAW materials on an agency's website or by other means.

C. SECTION DIRECTORY:

Section 1 amends s. 11.60, F.S., revising duties of the Joint Administrative Procedures Committee.

Section 2 amends s. 57.111, F.S., expanding the definition of "small business party."

Section 3 amends s. 120.54, F.S., relating to rulemaking and rule adoption procedures.

Section 4 amends s. 120.55, F.S., requiring Internet publication of the FAW.

Section 5 amends s. 120.551, F.S., postponing the repeal of the section.

Section 6 amends s. 120.56, F.S., revising provisions relating to withdrawal of challenged rules.

Section 7 amends s. 120.569, F.S., prescribing circumstances under which the time for filing a petition for hearing must be extended.

Section 8 amends s. 120.57, F.S., requiring the inclusion of additional information in final orders and modifying the required notice relating to protests of contract solicitations or awards.

Section 9 amends s. 120.65, F.S., requiring additional reports from DOAH and agencies regarding the administrative hearing process.

Section 10 amends s. 120.74, F.S., requiring the filing of agency reports with JAPC, in addition to the President and Speaker.

Section 11 requires DOS to provide certain assistance to agencies in their transition to publishing on the FAW Internet website.

Section 12 provides an effective date of July 1, 2006, unless otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   It has not been determined how much agencies will save after the second year that the FAW Internet website is operational.

2. Expenditures:

It is estimated that the FAW Internet website will require a non-recurring cost over three years of $450,000 for DOS to comply with the proposed implementation timeline.[23] Per DOS, the Records Management Trust Fund cash balance and anticipated revenue is sufficient to support this project.[24]

DOS indicates that it will continue to charge 99 cents per line to agencies using the FAW from now through the second year that the FAW Internet website is operational. DOS also states that these revenues will be used to fund all costs associated with the Law, Code, and Administrative Weekly section within the Division of Library and Information Services.[25]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

Per DOS, local governments advertising on the FAW Internet website will pay the current space rate charge of 99 cents per line until implementation of the new services is complete.[26]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, DOS publishes the FAW on its Internet website. The website is accessible by the public free of charge, but cannot be searched by topic. The bill provides for a free, fully searchable FAW Internet website, the ability for users to have selected notices e-mailed to users, and the ability for users to access forms incorporated by reference in rules. Accordingly, the bill will provide the public with greater access to the FAW and with advanced search capabilities.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to the Administration Commission for the purpose of prescribing the form and substantive provisions of a protest bond. The bond form currently exists in rule;[27] however, there has been an outstanding objection from the Joint Administrative Procedures Committee

[23] Telephone conversation with the Department of State, Administrative Code and Weekly Unit, February 10, 2006.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] Ch. 28-110.005, *Fla. Admin. Code.*

since its promulgation.[28] The rulemaking authority granted by the bill specifically addresses the JAPC objection.

The bill provides additional rulemaking authority regarding a specific class of respondents requesting an administrative hearing. The Administration Commission currently has rulemaking authority to promulgate uniform rules applicable to requests for administrative hearings under ss. 120.569 and 120.57, F.S. The additional authority granted in this bill specifies the pleading requirements for a respondent requesting an administrative hearing as part of an agency enforcement or disciplinary action.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Environmental Protection (DEP) has maintained a "pilot project" regarding online publication of FAW materials. Under current statutes, this pilot project[29] expires on July 1, 2006.[30] The Department of State has indicated that the new Florida Administrative Weekly and Florida Administrative Code Internet website is substantially complete. As a result, the extension of the DEP pilot project[31] no longer appears necessary.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Governmental Operations Committee adopted a strike-all amendment and reported the bill favorably as amended.

In addition to the provisions provided in the bill, the amendment expands access to the Florida Equal Access to Justice Act by expanding the definition of "small business party" to include an individual whose net worth is less than $2M, when an agency claim is made against that individual's license, and the agency's action is deemed not "substantially justified."

The amendment also:

- Provides additional requirements for final orders issued after a DOAH hearing under s. 120.57(1), F.S.
- Requires DOAH and agencies to file certain reports with the Administration Commission and JAPC.
- Includes additional requirements (beyond those in the original bill) regarding the timing and substance of requests for administrative hearing.

In relation to agency rulemaking, the amendment clarifies that an agency must file a Notice of Change after a final rulemaking hearing, if non-technical changes are made, and requires publication of the notice in the FAW.

---

[28] See *Fla. Admin. Weekly*, Vol. 24, No. 20, May 15, 1998.
[29] S. 120.551(1), *et seq.*, F.S.
[30] *Id.* at paragraph (3).
[31] Section 5, amending s. 120.551(3), F.S.

A bill to be entitled

An act relating to administrative procedures; amending s. 11.60, F.S.; revising duties of the Administrative Procedures Committee with respect to its review of statutes; amending s. 57.111, F.S.; redefining the term "small business party" to include certain individuals whose net worth does not exceed a specified amount; amending s. 120.54, F.S.; requiring an agency to file a notice of rule change with the Administrative Procedures Committee; revising times for filing rules for adoption; providing an exception to the term "administrative determination" for purposes of rule adoption; providing for the form and provisions of bonds; providing an additional type of uniform rules of procedure to be adopted by the commission; providing requirements with respect to the contents thereof; providing an additional requirement with respect to specified uniform rules of procedure; amending s. 120.55, F.S.; requiring that certain information be included in forms incorporated by reference in rules; requiring the Florida Administrative Weekly to be published electronically on an Internet website; providing additional duties of the Department of State with respect to publication of notices; providing requirements for the Florida Administrative Weekly Internet website; providing that publication of specified material on the website does not preclude other publication; amending s. 120.551, F.S.; postponing the repeal of provisions relating to Internet publication of

specified notices; amending s. 120.56, F.S.; revising provisions relating to challenged proposed rules that are declared invalid; amending s. 120.569, F.S.; prescribing circumstances under which the time for filing a petition for hearing must be extended; amending s. 120.57, F.S.; requiring a final order to include an explicit ruling on each exception to the recommended order; requiring that additional information be included in notices relating to protests of contract solicitations or awards; amending s. 120.65, F.S.; requiring the Division of Administrative Hearings to include certain recommendations and information in its annual report to the Administrative Procedures Committee and the Administration Commission; amending s. 120.74, F.S.; requiring agency reports to be filed with the Administrative Procedures Committee; requiring that the annual report filed by an agency identify the types of cases or disputes in which it is involved which should be conducted under the summary hearing process; requiring the Department of State to provide certain assistance to agencies in their transition to publishing on the Florida Administrative Weekly Internet website; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 11.60, Florida Statutes, is amended to read:

11.60 Administrative Procedures Committee; creation;

membership; powers; duties.--

(4) The committee shall ~~undertake and~~ maintain a ~~systematic and~~ continuous review of statutes that authorize agencies to adopt rules and shall make recommendations to the appropriate standing committees of the Senate and the House of Representatives as to the advisability of considering changes to the delegated legislative authority to adopt rules in specific circumstances. The annual report submitted pursuant to paragraph (2)(f) shall include ~~a schedule for the required systematic review of existing statutes, a summary of the status of this review, and~~ any recommendations provided to the standing committees during the preceding year.

Section 2. Paragraph (d) of subsection (3) of section 57.111, Florida Statutes, is amended to read:

57.111 Civil actions and administrative proceedings initiated by state agencies; attorneys' fees and costs.--

(3) As used in this section:

(d) The term "small business party" means:

1.a. A sole proprietor of an unincorporated business, including a professional practice, whose principal office is in this state, who is domiciled in this state, and whose business or professional practice has, at the time the action is initiated by a state agency, not more than 25 full-time employees or a net worth of not more than $2 million, including both personal and business investments; ~~or~~

b. A partnership or corporation, including a professional practice, which has its principal office in this state and has at the time the action is initiated by a state agency not more

than 25 full-time employees or a net worth of not more than $2 million; or

c. An individual whose net worth did not exceed $2 million at the time the action is initiated by a state agency when the action is brought against that individual's license to engage in the practice or operation of a business, profession, or trade; or

2. Any ~~Either~~ small business party as defined in subparagraph 1., without regard to the number of its employees or its net worth, in any action under s. 72.011 or in any administrative proceeding under that section to contest the legality of any assessment of tax imposed for the sale or use of services as provided in chapter 212, or interest thereon, or penalty therefor.

Section 3. Paragraphs (d) and (e) of subsection (3) and paragraph (b) of subsection (5) of section 120.54, Florida Statutes, are amended to read:

120.54 Rulemaking.--

(3) ADOPTION PROCEDURES.--

(d) Modification or withdrawal of proposed rules.--

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the rule has not been changed from the rule as previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days prior to filing the rule for adoption. Any change, other than a technical change that does not affect the substance of the rule, must be supported by the record of public hearings

held on the rule, must be in response to written material received on or before the date of the final public hearing, or must be in response to a proposed objection by the committee. In addition, when any change is made in a proposed rule, other than a technical change, the adopting agency shall provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The agency shall file the notice of change with the committee, along with the reasons for the ~~such~~ change, and provide the notice of change to persons requesting it, at least 21 days prior to filing the rule for adoption. The notice of change shall be published in the Florida Administrative Weekly at least 21 days prior to filing the rule for adoption. This subparagraph does not apply to emergency rules adopted pursuant to subsection (4).

2. After the notice required by paragraph (a) and prior to adoption, the agency may withdraw the rule in whole or in part.

3. After adoption and before the effective date, a rule may be modified or withdrawn only in response to an objection by the committee or may be modified to extend the effective date by not more than 60 days when the committee has notified the agency that an objection to the rule is being considered.

4. The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published, shall notify those persons described in subparagraph (a)3. in accordance with the requirements of that subparagraph, and shall notify the Department of State if the rule is required

to be filed with the Department of State.

5. After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

(e) Filing for final adoption; effective date.--

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, it shall file with the Department of State three certified copies of the rule it proposes to adopt, a summary of the rule, a summary of any hearings held on the rule, and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required by this subparagraph, in the office of the agency head, and such rules shall be open to the public.

2. A rule may not be filed for adoption less than 28 days or more than 90 days after the notice required by paragraph (a), until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days after preparation of a statement of estimated regulatory costs required under s. 120.541, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. ~~Filings shall be made no less than 28 days nor more than 90 days after the notice required by paragraph (a).~~ When a required notice of change is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published

prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term "public hearing" includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete. ~~The filing of a petition for an administrative determination under the provisions of s. 120.56(2) shall toll the 90-day period during which a rule must be filed for adoption until the administrative law judge has filed the final order with the clerk.~~

3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking requirements have been met, and that there is no administrative determination pending on the rule.

4. At the time a rule is filed, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee. The department shall reject any rule not filed within the prescribed time limits; that does not satisfy all statutory rulemaking requirements; upon which an

agency has not responded in writing to all material and timely written inquiries or written comments; upon which an administrative determination is pending; or which does not include a statement of estimated regulatory costs, if required.

5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule shall withdraw the rule and give notice of its action in the next available issue of the Florida Administrative Weekly.

6. The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the rule, or on a date required by statute. Rules not required to be filed with the Department of State shall become effective when adopted by the agency head or on a later date specified by rule or statute. If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

<u>For the purposes of this paragraph, the term "administrative determination" does not include subsequent judicial review.</u>

(5) UNIFORM RULES.--

(b) The uniform rules of procedure adopted by the

commission pursuant to this subsection shall include, but are not limited to:

1. Uniform rules for the scheduling of public meetings, hearings, and workshops.

2. Uniform rules for use by each state agency that provide procedures for conducting public meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such public meetings, hearings, and workshops, in person and by means of communications media technology. The rules shall provide that all evidence, testimony, and argument presented shall be afforded equal consideration, regardless of the method of communication. If a public meeting, hearing, or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means, the notice shall so state. The notice for public meetings, hearings, and workshops utilizing communications media technology shall state how persons interested in attending may do so and shall name locations, if any, where communications media technology facilities will be available. Nothing in this paragraph shall be construed to diminish the right to inspect public records under chapter 119. Limiting points of access to public meetings, hearings, and workshops subject to the provisions of s. 286.011 to places not normally open to the public shall be presumed to violate the right of access of the public, and any official action taken under such circumstances is void and of no effect. Other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, shall apply to public meetings, hearings, and workshops conducted by means of

communications media technology, and shall be liberally construed in their application to such public meetings, hearings, and workshops. As used in this subparagraph, "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

3. Uniform rules of procedure for the filing of notice of protests and formal written protests. The Administration Commission may prescribe the form and substantive provisions of a required bond.

4. Uniform rules of procedure for the filing of petitions for administrative hearings pursuant to s. 120.569 or s. 120.57. Such rules shall require the petition to include:

a. The identification of the petitioner.

b. A statement of when and how the petitioner received notice of the agency's action or proposed action.

c. An explanation of how the petitioner's substantial interests are or will be affected by the action or proposed action.

d. A statement of all material facts disputed by the petitioner or a statement that there are no disputed facts.

e. A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action.

f. A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the

alleged facts relate to the specific rules or statutes.

g. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the agency to take with respect to the proposed action.

5. Uniform rules for the filing of a request for administrative hearing by a respondent in agency enforcement and disciplinary actions. Such rules shall require a request to include:

a. The name, address, and telephone number of the party making the request and the name, address, and telephone number of the party's counsel or qualified representative upon whom service of pleadings and other papers shall be made.

b. A statement that the respondent is requesting an administrative hearing and disputes the material facts alleged by the petitioner, in which case the respondent shall identify those material facts that are in dispute, or that the respondent is requesting an administrative hearing and does not dispute the material facts alleged by the petitioner.

c. A reference by file number to the administrative complaint that the party has received from the agency and the date on which the agency pleading was received.

The agency may provide an election-of-rights form for the respondent's use in requesting a hearing, so long as any form provided by the agency calls for the information in sub-subparagraphs a.-c. and does not impose any additional requirements on a respondent in order to request a hearing, unless such requirements are specifically authorized by law.

6.~~5.~~ Uniform rules of procedure for the filing and prompt disposition of petitions for declaratory statements. The rules shall also describe the contents of the notices that must be published in the Florida Administrative Weekly under s. 120.565, including any applicable time limit for the filing of petitions to intervene or petitions for administrative hearing by persons whose substantial interests may be affected.

7.~~6.~~ Provision of a method by which each agency head shall provide a description of the agency's organization and general course of its operations.

8.~~7.~~ Uniform rules establishing procedures for granting or denying petitions for variances and waivers pursuant to s. 120.542.

Section 4. Effective December 31, 2007, section 120.55, Florida Statutes, is amended to read:

120.55 Publication.--

(1) The Department of State shall:

(a)1. Through a continuous revision system, compile and publish the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the specific rulemaking authority pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(9), and complete indexes to all rules contained in the code. Supplementation shall be made as often as practicable, but at least monthly. The department may contract with a publishing firm for the publication, in a timely and useful form, of the Florida Administrative Code; however, the department shall retain responsibility for the code as provided

in this section. This publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created

by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

(b) Electronically publish on an Internet website managed by the department ~~publish~~ a weekly publication entitled the "Florida Administrative Weekly," which shall serve as the official Internet website for such publication and must contain:

1. Notice of adoption of, and an index to, all rules filed during the preceding week.

2. All notices required by s. 120.54(3)(a), showing the text of all rules proposed for consideration ~~or a reference to the location in the Florida Administrative Weekly where the text of the proposed rules is published~~.

3. All notices of public meetings, hearings, and workshops conducted in accordance with the provisions of s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.

4. A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.

5. Notice of petitions for declaratory statements or administrative determinations.

6. A summary of each objection to any rule filed by the Administrative Procedures Committee during the preceding week.

7. A cumulative list of all rules that have been proposed but not filed for adoption.

8.~~7.~~ Any other material required or authorized by law or deemed useful by the department.

The department shall publish a printed version of the Florida Administrative Weekly and make copies available on an annual subscription basis. The department may contract with a publishing firm for printed publication of the Florida Administrative Weekly.

(c) Review notices for compliance with format and numbering requirements before publishing them on the Florida Administrative Weekly Internet website.

(d)~~(c)~~ Prescribe by rule the style and form required for rules submitted for filing and establish the form for their certification.

(e)~~(d)~~ Correct grammatical, typographical, and like errors not affecting the construction or meaning of the rules, after having obtained the advice and consent of the appropriate agency, and insert history notes.

~~(e) Make copies of the Florida Administrative Weekly available on an annual subscription basis computed to cover a pro rata share of 50 percent of the costs related to the publication of the Florida Administrative Weekly.~~

(f) Charge each agency using the Florida Administrative Weekly a space rate ~~computed~~ to cover ~~a pro rata share of 50 percent of~~ the costs related to the Florida Administrative Weekly and the Florida Administrative Code.

(g) Maintain a permanent record of all notices published in the Florida Administrative Weekly.

(2) The Florida Administrative Weekly Internet website must allow users to:

(a) Search for notices by type, publication date, rule number, word, subject, and agency.

(b) Search a database that makes available all notices published on the website for a period of at least 5 years.

(c) Subscribe to an automated e-mail notification of selected notices.

(d) View agency forms incorporated by reference in proposed rules.

(e) Comment on proposed rules.

(3) Publication of material required by paragraph (1)(b) on the Florida Administrative Weekly Internet website does not preclude publication of such material on an agency's website or by other means.

(4) ~~(2)~~ Each agency shall provide copies of its rules upon request, with citations to the grant of rulemaking authority and the specific law implemented for each rule ~~print or distribute copies of its rules, citing the specific rulemaking authority pursuant to which each rule was adopted~~.

(5) ~~(3)~~ Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Code or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of the supervisor or person who approved the rule, and the date upon which the rule was approved.

(6) Access to the Florida Administrative Weekly Internet website and its contents, including the e-mail notification

service, shall be free for the public.

(7)(a) ~~(4)(a)~~ Each year the Department of State shall furnish the Florida Administrative Weekly, without charge and upon request, as follows:

1. One subscription to each federal and state court having jurisdiction over the residents of the state; the Legislative Library; each state university library; the State Library; each depository library designated pursuant to s. 257.05; and each standing committee of the Senate and House of Representatives and each state legislator.

2. Two subscriptions to each state department.

3. Three subscriptions to the library of the Supreme Court of Florida, the library of each state district court of appeal, the division, the library of the Attorney General, each law school library in Florida, the Secretary of the Senate, and the Clerk of the House of Representatives.

4. Ten subscriptions to the committee.

(b) The Department of State shall furnish one copy of the Florida Administrative Weekly, at no cost, to each clerk of the circuit court and each state department, for posting for public inspection.

(8)(a) ~~(5)(a)~~ All fees and moneys collected by the Department of State under this chapter shall be deposited in the Records Management Trust Fund for the purpose of paying for ~~the publication and distribution of the Florida Administrative Code and the Florida Administrative Weekly and for associated~~ costs incurred by the department in carrying out this chapter.

(b) The unencumbered balance in the Records Management

Trust Fund for fees collected pursuant to this chapter may ~~shall~~ not exceed $300,000 at the beginning of each fiscal year, and any excess shall be transferred to the General Revenue Fund.

~~(c) It is the intent of the Legislature that the Florida Administrative Weekly be supported entirely from funds collected for subscriptions to and advertisements in the Florida Administrative Weekly.~~

Section 5. Subsection (3) of section 120.551, Florida Statutes, is amended to read:

120.551 Internet publication.--

(3) This section is repealed effective December 31, 2007 ~~July 1, 2006, unless reviewed and reenacted by the Legislature before that date~~.

Section 6. Paragraph (b) of subsection (2) of section 120.56, Florida Statutes, is amended to read:

120.56 Challenges to rules.--

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.--

(b) The administrative law judge may declare the proposed rule wholly or partly invalid. Unless the decision of the administrative law judge is reversed on appeal, the proposed rule or provision of a proposed rule declared invalid shall ~~be withdrawn by the adopting agency and shall~~ not be adopted. ~~No rule shall be filed for adoption until 28 days after the notice required by s. 120.54(3)(a), until 21 days after the notice required by s. 120.54(3)(d), until 14 days after the public hearing, until 21 days after preparation of a statement of estimated regulatory costs required pursuant to s. 120.541, or until the administrative law judge has rendered a decision,~~

~~whichever applies.~~ However, the agency may proceed with all other steps in the rulemaking process, including the holding of a factfinding hearing. In the event part of a proposed rule is declared invalid, the adopting agency may, in its sole discretion, withdraw the proposed rule in its entirety. The agency whose proposed rule has been declared invalid in whole or part shall give notice of the decision in the first available issue of the Florida Administrative Weekly.

Section 7. Paragraph (c) of subsection (2) of section 120.569, Florida Statutes, is amended to read:

120.569 Decisions which affect substantial interests.--

(2)

(c) Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b)4. Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable. <u>The time for filing a petition shall be extended for</u>

an appropriate time if the petitioner demonstrates that the petitioner has been misled or guided into inaction by the agency or has in some extraordinary way been prevented from asserting his or her rights by the agency.

Section 8. Paragraphs (k) and (m) of subsection (1) and paragraph (a) of subsection (3) of section 120.57, Florida Statutes, are amended to read:

120.57 Additional procedures for particular cases.--

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.--

(k) The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition or penalty, if applicable, and any other information required by law to be contained in the final order. All proceedings conducted under ~~pursuant to~~ this subsection shall be de novo. The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

(m) If a recommended order is submitted to an agency, the agency shall provide a copy of its final order and any exceptions to the division within 15 days after the order is filed with the agency clerk.

(3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO CONTRACT SOLICITATION OR AWARD.--Agencies subject to this chapter shall use the uniform rules of procedure, which provide procedures for the resolution of protests arising from the contract solicitation or award process. Such rules shall at least provide that:

(a) The agency shall provide notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase by electronic posting. This notice shall contain the following statement: "Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, Florida Statutes."

Section 9. Paragraphs (c) and (d) are added to subsection (10) of section 120.65, Florida Statutes, to read:

120.65 Administrative law judges.--

(10) Not later than February 1 of each year, the division shall issue a written report to the Administrative Procedures Committee and the Administration Commission, including at least the following information:

(c) Recommendations as to those types of cases or disputes which should be conducted under the summary hearing process described in s. 120.574.

(d) A report regarding each agency's compliance with the filing requirement in s. 120.57(1)(m).

Section 10. Subsection (2) of section 120.74, Florida

Statutes, is amended to read:

120.74 Agency review, revision, and report.--

(2) Beginning October 1, 1997, and by October 1 of every other year thereafter, the head of each agency shall file a report with the President of the Senate, ~~and~~ the Speaker of the House of Representatives, and the committee, with a copy to each appropriate standing committee of the Legislature, which certifies that the agency has complied with the requirements of this subsection. The report must specify any changes made to its rules as a result of the review and, when appropriate, recommend statutory changes that will promote efficiency, reduce paperwork, or decrease costs to government and the private sector. The report must identify the types of cases or disputes in which the agency is involved which should be conducted under the summary hearing process described in s. 120.574.

Section 11. The Department of State shall, before December 31, 2007, make available, to all agencies required on the effective date of this act to publish materials in the Florida Administrative Weekly, training courses for the purpose of assisting the agencies with their transition to publishing on the Florida Administrative Weekly Internet website. The training courses may be provided in the form of workshops or software packages that allow self-training by agency personnel.

Section 12. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7089 PCB TURS 06-02 Facilities for Retained Spring Training Franchises
SPONSOR(S): Tourism Committee and Rep. Detert
TIED BILLS: **IDEN./SIM. BILLS:** SB 1886

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Tourism Committee	8 Y, 0 N	Langston	McDonald
1) Transportation & Economic Development Appropriations Committee		McAuliffe	Gordon
2) State Infrastructure Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Chapter 2000-186, LOF, created a one-time funding opportunity for at least five applicants certified as facilities for retained spring training franchises. Applications for consideration for certification were required to be submitted to the Office of Tourism, Trade, and Economic Development (OTTED) by October 1, 2000 with certifications being given by January 1, 2001. OTTED was required to competitively evaluate applications. OTTED certified applicants based upon the statutory criteria and notified the Department of Revenue of the certifications. The Department of Revenue was instructed to distribute sales tax proceeds to any applicant certified under s. 288.1162(5), F.S., as a "facility for a retained spring training franchise." A certified applicant could receive up to $41,667 monthly for up to 30 years. However, not more than $208,335 could be distributed monthly in the aggregate to all applicants certified as facilities for retained spring training franchises. The duration and total amount of funding varies depending upon the certification. The five existing certifications are: Lakeland - Detroit Tigers, Dunedin -Toronto Blue Jays, Indian River - Los Angeles Dodgers, Osceola County - Houston Astros, and Clearwater - Philadelphia Phillies.

The bill provides for certification of up to five additional applicants as facilities for retained spring training franchises. Applications must be received by OTTED by October 1, 2006 and certifications made by January 1, 2007. The bill uses the same procedures used for the one-time funding of the five certified applicants in 2001 with the exception of the criteria. The bill includes additional selection criteria, including a prohibition against consideration of an application for those franchises that have more than five years remaining on an existing lease. The aggregate amount of funding for certified applicants is up to $41,667 per facility per month for a total aggregate monthly maximum of $208,335.

The bill amends s. 212.20, F.S., to increase the aggregate distribution of sales and use tax distributions to all applicants certified as facilities for a retained spring training franchises to $416,670 to accommodate the five additional certifications. It also provides that both the amount and duration of distribution established in the certification cannot be altered. The addition of five certifications of applicants as retained spring training franchise facilities will have a maximum negative impact of ($833,340) in fiscal year 2006-2007 and a maximum recurring negative impact of ($2,500,020) annually beginning in fiscal year 2007-2008 and continuing for up to 30 years. See "Fiscal Comments."

Currently, five retained spring training franchises with no more than 5 years remaining on existing leases are the Baltimore Orioles, Cincinnati Reds, Cleveland Indians, Pittsburgh Pirates, and the Tampa Bay Devil Rays.

The bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government- The bill increases responsibilities for the Governor's Office of Tourism, Trade, and Economic Development and the Department of Revenue relating to the certification and distribution processes related to applicants for facilities for retained spring training franchises.

Ensure Lower Taxes – The bill requires an annual distribution from sales tax revenues of up to $2,500,020 for additional certifications for applicants for facilities for retained spring training franchises. See details below.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Facilities for Retained Spring Training Franchise - Certification

Chapter 2000-186, LOF, created a one-time funding opportunity for at least five applicants certified as facilities for retained spring training franchises. Applications for consideration for certification were required to be submitted to the Office of Tourism, Trade, and Economic Development (OTTED) by October 1, 2000 with certifications being given by January 1, 2001. OTTED was required to competitively evaluate applications. If the number exceeded five and the aggregate funding request exceeded $208,335 per month, OTTED was required to rank the applications according to criteria delineated in s. 288.1162(5)(c), F.S. OTTED could not certify partial funding to any applicant certified as a facility for a retained spring training franchise.

Prior to certifying, OTTED was required to determine that a unit of local government was responsible for the acquisition, construction, management or operation of the retained spring training franchise facility or held title to the property on which the facility was located; the applicant had a verified copy of a signed agreement with a retained spring training franchise for the use of the facility for a term of at least 15 years; the applicant had a financial commitment of 50 percent or more of the funds required by an agreement for the acquisition, construction, or renovation of the facility; the applicant had valid projections demonstrating that the facility would attract paid attendance of at least 50,000 annually; and, that the facility was located in a county levying a tourist development tax pursuant to s.125.0104, F.S.

Funds could not be expended to subsidize privately-owned and maintained facilities for use by the retained spring training franchise. Funds could be used to relocate an existing retained spring training franchise to another unit of local government within the state if the local government from which it was relocating agreed to the move. Other than the use of funds for an agreed to relocation, funds could only be used to pay for acquisition, construction, reconstruction, or renovation of a facility or to pay or pledge for the payment of debt service on a facility or for the reimbursement or refinancing of bonds issued.

The Department of Revenue was instructed to distribute sales tax proceeds to any applicant certified under s. 288.1162(5), F.S., as a "facility for a retained spring training franchise." A certified applicant could receive up to $41,667 monthly for up to 30 years. However, not more than $208,335 could be distributed monthly in the aggregate to all applicants certified as facilities for retained spring training franchises.

OTTED certified the following:

• Lakeland	Detroit Tigers	$ 7 million	15 years
• Dunedin	Toronto Blue Jays	$10 million	20 years
• Indian River	Los Angeles Dodgers	$15 million	30 years
• Osceola County	Houston Astros	$ 7.5 million	15 years
• Clearwater	Philadelphia Phillies	$15 million	30 years

Funding – Tax Distribution

Chapter 212, F.S., imposes a state sales and use tax of six percent on retail sales of most tangible personal property, admissions, transient lodgings, commercial rentals, and motor vehicles. Tax collections are deposited by the Department of Revenue (DOR) in the General Revenue Fund of the state and into a variety of trust funds benefiting state agencies and local governments. Section 212.20, F.S., governs the distribution by DOR of tax revenues collected under the provisions of Chapter 212, F.S. Subsection (6) of that section requires DOR to distribute funds to certain applicants certified as sports facilities.[1]

Specifically, s. 212.20(6)(d)7.b., F.S., requires DOR to distribute up to $41,667 monthly to applicants certified by OTTED as "facilities for retained spring training franchises." However, not more than $208,335 can be distributed monthly in the aggregate to all applicants certified as "facilities for retained spring training franchises." All distributions to certified applicants for new and retained professional sports franchise facilities and for retained spring training franchise facilities begin 60 days after certification and continue for no more than 30 years.

A certified applicant under the paragraph is not to receive more in distributions than actually expended by the applicant for the public purposes provided for in s. 288.1162(6), F.S. A certified applicant, however, is entitled to receive distributions up to the maximum amount allowable and undistributed under s. 212.20, F.S., for additional renovations and improvements to the facility for the franchise without additional certification.

Proposed Changes:

The bill amends s. 288.1162(5), F.S., to provide for certification and funding of no more than five additional applicants for facilities for retained spring training franchises. Applications must be received by OTTED by October 1, 2006, and any certifications must be made by January 1, 2007. The bill uses the same procedures used for the one-time funding of five facilities in 2001 with the exception of changes in the selection criteria. The funding for facilities to be certified is up to $41,667 per facility per month for a total aggregate amount for the new certified applicants not to exceed $208,335 per month.

Additional criteria for selection is added, including a prohibition against consideration of an application for those franchises that have greater than 5 years remaining on an existing lease.[2] The bill amends s. 212.20(6)(d)7.b., F.S., to increase the aggregate distribution of sales and use tax distributions to all applicants certified as facilities for retained spring training franchises to $416,670 to accommodate the five additional certifications and to remove language that permits changes in the amount of distribution and length of distribution after certification and without any review by OTTED. This final change

[1] Under this paragraph, DOR provides funding to new and retained professional sports franchise facilities and to retained spring training franchise facilities as certified under s. 288.1162, F.S.; the Professional Golf Hall of Fame facility as certified pursuant to s. 288.1168, F.S., and to the International Game Fish Association World Center facility as certified pursuant to s. 288.1169, F.S. Each recipient receives a fixed monthly distribution that is set by statute. It also requires that no other sports businesses or facilities are entitled to distributions from DOR of tax revenues collected pursuant to Chapter 212, F.S.

[2] Currently, there are five spring training franchises that do not have more than 5 years on their leases: Baltimore Orioles, Cincinnati Reds, Cleveland Indians, Pittsburgh Pirates, and the Tampa Bay Devil Rays.

provides that the amount of distribution and the time frame for distribution is that which is specified in the certification.

C. SECTION DIRECTORY:

Section 1: Amends s. 212.20(6)(d)7.b., F.S., relating to distribution of funds to applicants certified as facilities for retained spring training franchises; increases distribution for applicants certified as facilities for retained spring training franchises; removes language providing ability to increase amount or duration of funding after certification.

Section 2: Amends ss. 288.1162, (5) and (7), F.S., relating to retained spring training franchise facilities; provides additional certifications of applicants as facilities for retained spring training franchises; provides procedures and criteria for certifying applicants; conforms language; provides exceptions for certification disqualification; provides limitation on length of payment.

Section 3: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: :

	FY 06-07	FY 07-08	FY 08-09
General Revenue	($833,340)	($2,500,020)	($2,500,020)

See "Fiscal Comments" for more detail.

2. Expenditures:

Minimal. See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

	FY 06-07	FY 07-08	FY 08-09
Local Revenues	$833,340	$2,500,020	$2,500,020

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

At this time, the exact impact on the private sector is not able to be determined.

D. FISCAL COMMENTS:

The actual amount of the distribution and the duration of the distribution for the five new certifications of applicants as retained spring franchise facilities will not be known until the certifications are approved by OTTED. As with the previous such certifications, the amount and duration could vary. Therefore, the maximum amount of monthly distribution was used to estimate the general revenue impacts. Since certifications have to be completed by January 1, 2007 and distributions occur 60 days after DOR is notified by OTTED, the assumption was made that distributions would begin March 1, 2007 for purposes of estimating fiscal year 2006-2007 impacts.

The bill will have an impact on OTTED and the Florida Sports Foundation with regard to the application review and certification process for the new certifications created by the bill. The impact is not known at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require municipalities or counties to expend funds, does not reduce their authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 7, 2006, the Tourism Committee adopted three amendments to PCB TURS 06-02 and reported the bill favorably. The first amendment increased the number of proposals eligible for certification from four to five and increased the maximum aggregate funding by $41,667 to accommodate the additional certification. The second amendment changed the certification requirement for the remaining allowable time on a franchise lease from four years to five years to accommodate the Pittsburgh Pirates. The third amendment increased to total aggregate monthly distribution in s. 212.20, F.S., to include the additional certifications.

A bill to be entitled

An act relating to facilities for retained spring training franchises; amending s. 212.20, F.S.; revising a limitation on certain distributions to certified facilities for a retained spring training franchise; deleting a provision entitling an applicant to receive certain distributions without additional certification; amending s. 288.1162, F.S.; requiring the Office of Tourism, Trade, and Economic Development to competitively evaluate applications for funding of certain additional facilities; providing application and certification requirements; specifying evaluation criteria; revising the number of certifications of such facilities; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (6) of section 212.20, Florida Statutes, is amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.--

(6) Distribution of all proceeds under this chapter and s. 202.18(1)(b) and (2)(b) shall be as follows:

(d) The proceeds of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be distributed as follows:

1. In any fiscal year, the greater of $500 million, minus an amount equal to 4.6 percent of the proceeds of the taxes collected pursuant to chapter 201, or 5 percent of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in monthly installments into the General Revenue Fund.

2. Two-tenths of one percent shall be transferred to the Ecosystem Management and Restoration Trust Fund to be used for water quality improvement and water restoration projects.

3. After the distribution under subparagraphs 1. and 2., 8.814 percent of the amount remitted by a sales tax dealer located within a participating county pursuant to s. 218.61 shall be transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to be transferred pursuant to this subparagraph to the Local Government Half-cent Sales Tax Clearing Trust Fund shall be reduced by 0.1 percent, and the department shall distribute this amount to the Public Employees Relations Commission Trust Fund less $5,000 each month, which shall be added to the amount calculated in subparagraph 4. and distributed accordingly.

4. After the distribution under subparagraphs 1., 2., and 3., 0.095 percent shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.65.

5. After the distributions under subparagraphs 1., 2., 3., and 4., 2.0440 percent of the available proceeds pursuant to this paragraph shall be transferred monthly to the Revenue Sharing Trust Fund for Counties pursuant to s. 218.215.

6. After the distributions under subparagraphs 1., 2., 3., and 4., 1.3409 percent of the available proceeds pursuant to this paragraph shall be transferred monthly to the Revenue Sharing Trust Fund for Municipalities pursuant to s. 218.215. If the total revenue to be distributed pursuant to this subparagraph is at least as great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, no municipality shall receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

7. Of the remaining proceeds:

a. In each fiscal year, the sum of $29,915,500 shall be divided into as many equal parts as there are counties in the state, and one part shall be distributed to each county. The distribution among the several counties shall begin each fiscal year on or before January 5th and shall continue monthly for a total of 4 months. If a local or special law required that any moneys accruing to a county in fiscal year 1999-2000 under the then-existing provisions of s. 550.135 be paid directly to the district school board, special district, or a municipal

government, such payment shall continue until such time that the local or special law is amended or repealed. The state covenants with holders of bonds or other instruments of indebtedness issued by local governments, special districts, or district school boards prior to July 1, 2000, that it is not the intent of this subparagraph to adversely affect the rights of those holders or relieve local governments, special districts, or district school boards of the duty to meet their obligations as a result of previous pledges or assignments or trusts entered into which obligated funds received from the distribution to county governments under then-existing s. 550.135. This distribution specifically is in lieu of funds distributed under s. 550.135 prior to July 1, 2000.

b. The department shall distribute $166,667 monthly pursuant to s. 288.1162 to each applicant that has been certified as a "facility for a new professional sports franchise" or a "facility for a retained professional sports franchise" pursuant to s. 288.1162. Up to $41,667 shall be distributed monthly by the department to each applicant that has been certified as a "facility for a retained spring training franchise" pursuant to s. 288.1162; however, not more than $416,670 ~~$208,335~~ may be distributed monthly in the aggregate to all certified facilities for a retained spring training franchise. Distributions shall begin 60 days following such certification and shall continue for not more than 30 years. Nothing contained in this paragraph shall be construed to allow an applicant certified pursuant to s. 288.1162 to receive more in distributions than actually expended by the applicant for the

public purposes provided for in s. 288.1162(6). ~~However, a certified applicant is entitled to receive distributions up to the maximum amount allowable and undistributed under this section for additional renovations and improvements to the facility for the franchise without additional certification.~~

c. Beginning 30 days after notice by the Office of Tourism, Trade, and Economic Development to the Department of Revenue that an applicant has been certified as the professional golf hall of fame pursuant to s. 288.1168 and is open to the public, $166,667 shall be distributed monthly, for up to 300 months, to the applicant.

d. Beginning 30 days after notice by the Office of Tourism, Trade, and Economic Development to the Department of Revenue that the applicant has been certified as the International Game Fish Association World Center facility pursuant to s. 288.1169, and the facility is open to the public, $83,333 shall be distributed monthly, for up to 168 months, to the applicant. This distribution is subject to reduction pursuant to s. 288.1169. A lump sum payment of $999,996 shall be made, after certification and before July 1, 2000.

8. All other proceeds shall remain with the General Revenue Fund.

Section 2. Paragraph (c) of subsection (5) and subsection (7) of section 288.1162, Florida Statutes, are amended to read:

288.1162 Professional sports franchises; spring training franchises; duties.--

(5)

(c)1. The Office of Tourism, Trade, and Economic Development shall competitively evaluate applications for funding of a facility for a retained spring training franchise. Applications must be submitted by October 1, 2000, with certifications to be made by January 1, 2001. If the number of applicants exceeds five and the aggregate funding request of all applications exceeds $208,335 per month, the office shall rank the applications according to a selection criteria, certifying the highest ranked proposals. The evaluation criteria shall include, with priority given in descending order to the following items:

a.~~1.~~ The intended use of the funds by the applicant, with priority given to the construction of a new facility.

b.~~2.~~ The length of time that the existing franchise has been located in the state, with priority given to retaining franchises that have been in the same location the longest.

c.~~3.~~ The length of time that a facility to be used by a retained spring training franchise has been used by one or more spring training franchises, with priority given to a facility that has been in continuous use as a facility for spring training the longest.

d.~~4.~~ For those teams leasing a spring training facility from a unit of local government, the remaining time on the lease for facilities used by the spring training franchise, with priority given to the shortest time period remaining on the lease.

e.~~5.~~ The duration of the future-use agreement with the retained spring training franchise, with priority given to the future-use agreement having the longest duration.

f.~~6.~~ The amount of the local match, with priority given to the largest percentage of local match proposed.

g.~~7.~~ The net increase of total active recreation space owned by the applying unit of local government following the acquisition of land for the spring training facility, with priority given to the largest percentage increase of total active recreation space.

h.~~8.~~ The location of the facility in a brownfield, an enterprise zone, a community redevelopment area, or other area of targeted development or revitalization included in an Urban Infill Redevelopment Plan, with priority given to facilities located in these areas.

i.~~9.~~ The projections on paid attendance attracted by the facility and the proposed effect on the economy of the local community, with priority given to the highest projected paid attendance.

2. Beginning July 1, 2006, the Office of Tourism, Trade, and Economic Development shall competitively evaluate applications for funding of facilities for retained spring training franchises in addition to those certified and funded under subparagraph 1. Applications must be submitted by October 1, 2006, with certifications to be made by January 1, 2007. The office shall rank the applications according to selection criteria, certifying no more than five proposals. The aggregate funding request of all applicants certified shall not exceed an

aggregate funding request of $208,335 per month. The evaluation criteria shall include the following, with priority given in descending order:

a. The intended use of the funds by the applicant for acquisition or construction of a new facility.

b. The intended use of the funds by the applicant to renovate a facility.

c. The length of time that a facility to be used by a retained spring training franchise has been used by one or more spring training franchises, with priority given to a facility that has been in continuous use as a facility for spring training the longest.

d. For those teams leasing a spring training facility from a unit of local government, the remaining time on the lease for facilities used by the spring training franchise, with priority given to the shortest time period remaining on the lease. For consideration under this subparagraph, the remaining time on the lease shall not exceed 5 years.

e. The duration of the future-use agreement with the retained spring training franchise, with priority given to the future-use agreement having the longest duration.

f. The amount of the local match, with priority given to the largest percentage of local match proposed.

g. The net increase of total active recreation space owned by the applying unit of local government following the acquisition of land for the spring training facility, with priority given to the largest percentage increase of total active recreation space.

h. The location of the facility in a brownfield area, an enterprise zone, a community redevelopment area, or another area of targeted development or revitalization included in an urban infill redevelopment plan, with priority given to facilities located in those areas.

i. The projections on paid attendance attracted by the facility and the proposed effect on the economy of the local community, with priority given to the highest projected paid attendance.

(7) The Office of Tourism, Trade, and Economic Development shall notify the Department of Revenue of any facility certified as a facility for a new professional sports franchise or a facility for a retained professional sports franchise or as a facility for a retained spring training franchise. The Office of Tourism, Trade, and Economic Development shall certify no more than eight facilities as facilities for a new professional sports franchise or as facilities for a retained professional sports franchise ~~and shall certify at least five as facilities for retained spring training franchises~~, including in such total any facilities certified by the Department of Commerce before July 1, 1996. The number of facilities certified as a retained spring training franchise shall be as provided by subsection (5). The office may make no more than one certification for any facility. The office may not certify funding for less than the requested amount to any applicant certified as a facility for a retained spring training franchise.

Section 3. This act shall take effect July 1, 2006.